

From: James Hamilton [REDACTED]
Sent: 19 October 2020 15:42
To: [REDACTED]@gov.scot>
Subject: Re: Letter to Mr Salmond

Hi [REDACTED]

[REDACTED]
The draft is in order [REDACTED]

I will get back to you shortly about the other letter.

Best wishes

James Hamilton

On Mon, 19 Oct 2020 at 11:30, wrote:
Hi James,

Hope you had a good weekend!

I've tidied up the Salmond response as discussed on Friday- this is now attached so you can just double check [REDACTED]

[REDACTED]
Best wishes,

[REDACTED]

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From: James Hamilton [REDACTED]
Sent: 20 October 2020 16:11
To: [REDACTED]@gov.scot>
Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Please disregard uncompleted draft just sent to you in error.

I have done a further draft reply- attached.

James

On Tue, 20 Oct 2020 at 14:02, wrote:
Hi James,

I've made some comments on the attached letter- I think that on the first point we can probably use some similar text to that in the first letter re. the legal clearance of the report [REDACTED]

I think the second point is a bit trickier as I don't think we can offer advice on what Mr Salmond may choose to do, only to note what you are intending to do. With that in mind, I've suggested adding a line with your previous committee correspondence, as this makes clear the intended position re. publishing evidence.

If you get a chance, would you be able to look at the suggested response to the committee today, so I can respond by close of play if possible?

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 19 October 2020 16:29
To: [REDACTED]
Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Suggested reply to this further letter. [REDACTED]
[REDACTED]

Best wishes

James

On Mon, 19 Oct 2020 at 09:55, James Hamilton [REDACTED] wrote:
OK

On Sun 18 Oct 2020 at 13:24, <[REDACTED]@gov.scot> wrote:
Further correspondence from Mr Salmond with an additional question to consider. If you think it would be appropriate, I will send a short email on Monday confirming you have received the correspondence, are considering the questions posed, and will respond in due course.

From: Alex Salmond [REDACTED]
Sent: 17 October 2020 12:34
To: [REDACTED]@gov.scot>
Subject: Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

Appendix 1

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]




Sent from my iPad

On 6 Oct 2020, at 22:28, Alex Salmond < wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the “court in the criminal proceedings”. I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government’s unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd’s personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those

in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

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Dear Mr Salmond

Thank you for your further letter of 17 October 2020.

Naturally any response to my enquiries relating to the factual matters I am asked to enquire into will be used in the compilation of the report. I have not yet decided fully on the format of the report but any reply to such enquiries will be liable to be published with the exception of material which cannot be made public as a result of court orders or for other legal reasons.

With regard to incidental queries it would not be my intention to publish them as a matter of routine and it would be my preferred option to make no comment pending the completion of my enquiries. However, I am concerned not to favour or be perceived to favour any particular interested party in the matter and therefore if I were asked questions concerning contacts between interested parties and me I might well think it proper or necessary in the public interest and in particular in the interests of transparency to give a full reply.

For that reason I cannot exclude the possibility that any correspondence between us might at some stage be published.

I hope this answers your question.

Yours etc

Re: Note to the Committee

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Tue, 20 Oct 2020 13:55:02 +0000

Hi [REDACTED]

I am happy with this.

James

On Tue 20 Oct 2020 at 14:43, wrote:

Hi James,

Apologies, I had put this in the same document as another thing and it wasn't very obvious- see suggested text below.

Best wishes,

[REDACTED]

Further to the update I provided to the Committee in August, I can confirm that I have sought written statements from a number of individuals who were involved in matters covered by my remit. I am currently undertaking analysis of these statements, and considering what additional information I may wish to seek. As this process is ongoing I am not able to provide any specific timescales within which I expect to finish my work.

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From: [REDACTED]
Sent: 20 October 2020 17:28
To: 'Shawn McArthur' <shawn.mcarthur@Advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Shawn,

Many thanks, I will get this information to you tomorrow morning.

Please see attached email from Mr Salmond to Mr Hamilton, with attachments, and draft response from Mr Hamilton to Mr Salmond.

Mr Salmond raises issues relating to court interlocutors made in relation to the judicial review, and information gained in disclosure during the criminal proceedings.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

From: Shawn McArthur <shawn.mcarthur@Advocates.org.uk>
Sent: 20 October 2020 12:03
To: [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

In relation to setting this case up on our systems for feeing. Can you advise on the following;

Case Name
Client Name
Your Ref no.
Confirmation on where fees are to be sent
PO No. if necessary

Thanks
Shawn

Shawn McArthur | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5616

COVID-19 – Ampersand remains open for business but with some changes to how we work. For the latest updates, please see our website [here](#).

From: [REDACTED]
Sent: 20 October 2020 10:21
To: Sheena Hume <sheena.hume@Advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Sheena,

Apologies for the delay, I wanted to double check things with Mr Hamilton and seek confirmation in writing that he was content to instruct. Mr Hamilton has now confirmed that he would like to proceed to instruct so we are fine to proceed.

[REDACTED]

I think the best thing would be if you could direct any future fees notice to myself and I will liaise with my colleagues here to organise payment. I'm going to double check with colleagues whether that is the best approach and will let you know if I need to make any modifications to this arrangement.

Best wishes,

[REDACTED]

From: Sheena Hume <sheena.hume@Advocates.org.uk>
Sent: 15 October 2020 14:52
To: [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Mr Ross has confirmed that if all that's required before 30 October is legal input/comment upon a letter, he would be able to accommodate that.

Please advise if you intend to proceed to instruct. If you are able to advise who any future fee note should be directed to that would assist with setting up a case file at my end. I note you've advised Jennifer that the costs will be met the by Scottish government.

Kind regards.
Sheena

Sheena Hume | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5809 | ampersandadvocates.com

From: [REDACTED]
Sent: 15 October 2020 11:17
To: Sheena Hume <sheena.hume@Advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Sheena,

Apologies, it should indeed read October. Thanks for spotting that.

Best wishes,

[REDACTED]

From: Sheena Hume <sheena.hume@Advocates.org.uk>
Sent: 15 October 2020 11:13
To: [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED]

Thanks for your email to Jennifer which I've picked up in her absence. Am I right in thinking the deadline for the letter is meant to read 'end of October'? Please let me know and I can speak further with Mr Ross.

Kind regards.
Sheena

Sheena Hume | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5809 | ampersandadvocates.com

From: [REDACTED]
Sent: 15 October 2020 10:15
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Jennifer,

Many thanks for getting back to us so quickly. I have spoken to Mr Hamilton about the timings and he thinks the timings set out below will work well, as we expect that the bulk of the work will be later into November.

I just wanted to check one thing about Mr Ross availability over the next couple of weeks. At the moment, Mr Hamilton has one item of correspondence he would like legal input on- mainly to check that there are no obvious legal problems with the final draft of the letter- which he needs to finalise before the end of November. Would Mr Ross be able to fit this in alongside his other commitments?

Happy to discuss.

Best wishes,

[REDACTED]

From: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Sent: 14 October 2020 11:09
To: [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi [REDACTED],

Thank you for confirming.

I have spoken with Mr Ross who would very much like to assist Mr Hamilton. As I mentioned on the phone he is fully engaged on a case with looming deadlines at the moment so has little to no time available between now and 30th October. Thereafter, beside the last week of November (w/c 23/11) where he is not available, he would have some time to assist. I'm not sure if that is helpful to Mr Hamilton but if you could confirm either way I would be grateful.

If Mr Hamilton would like to give Mr Ross a call he would be happy to speak to him. His mobile number is [REDACTED].

Kind Regards
Jennifer

Jennifer Dunn | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5614
(forwarding to: 07557 496 414) | ampersandadvocates.com
(my working days are Mondays, Tuesdays and Wednesdays 9am to 5pm)

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From: [REDACTED]
Sent: 14 October 2020 10:53
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Hi Jennifer,

The line in the PQ referencing costs relates only to Mr Hamilton himself. The Scottish Government is covering the expenses incurred by Mr Hamilton in undertaking his work.

Best wishes,

[REDACTED]

From: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Sent: 14 October 2020 10:42

To: [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Dear [REDACTED],

Thank you for your email. Can I clarify one point with you before I speak to Douglas. I note from the attachment that '*appointment as an independent advisor does not attract payment*'. Is that referring to Mr Ross not being paid for any legal advice he gives here or to something else? Many thanks.

Kind Regards
Jennifer

Jennifer Dunn | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5614
(forwarding to: 07557 496 414) | ampersandadvocates.com
(my working days are Mondays, Tuesdays and Wednesdays 9am to 5pm)

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From: [REDACTED]
Sent: 14 October 2020 10:12
To: Jennifer Dunn <jennifer.dunn@advocates.org.uk>
Subject: James Hamilton- Ministerial code referral

Dear Jennifer,

Thank you for the phone conversation earlier this morning. As discussed, I am acting on behalf of Mr James Hamilton, independent advisor, who is leading work on the First Minister's self-referral under the Scottish Ministerial Code, which was announced on 13 January 2019 and resumed in August 2020. I have attached a response to a parliamentary question that sets out the remit and various other particulars of the referral.

Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The number of hours of work required will vary as the referral progresses, and at this point I cannot give an exact estimate of the total number of hours required.

Mr Ross was recommended to Mr Hamilton as a suitable advisor with significant experience on relevant areas of law. On that basis, Mr Hamilton has asked me to check if Mr Ross is available and would like to take on this work.

Happy to provide more information if that would be helpful.

Best wishes,

[REDACTED]

[REDACTED]

[Please contact me on Skype or on [REDACTED]

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From: Alex Salmond [REDACTED]
Sent: 06 October 2020 22:29

To: [REDACTED]
Cc: Alex Salmond [REDACTED]
Subject: Mr James Hamilton

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee

information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED].

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

P850/18 Pet: Alex Salmond for J/R

DAC Beachcroft Scotland LLP Scottish Government

8 January 2019 Lord Pentland

Act: Clancy, Q.C. et D. Hamilton

Alt: R. Dunlop, Q.C. et C. O'Neill, Solicitor

Advocate

The Lord Ordinary, having heard counsel, on the petitioner's motion, of consent, and in terms and in respect of the Joint Minute for parties No. 39 of process,:-

- (i.) finds and declares that the decisions of the first named respondent, viz. Leslie Evans, as set out in:-
 - (a) a Decision Report written by her dated 21 August 2018 entitled "Formal complaints against Former First Minister, Alex Salmond" (production No. 6/2 in the petitioner's First Inventory of Productions); and
 - (b) a letter from her to the petitioner's solicitors dated 22 August 2018 (production No. 6/1 in the petitioner's First Inventory of Productions)are unlawful in respect that they were taken in circumstances which were procedurally unfair and in respect that they were tainted by apparent bias by reason of the extent and effects of the Investigating Officer's involvement with aspects of the matters raised in the formal complaints against the petitioner prior to her appointment as Investigating Officer in respect of each of those complaints;
- (ii.) reduces the decisions of the first named respondent contained in the aforementioned Decision Report dated 21 August 2018 and letter dated 22 August 2018;
- (iii.) refuses the petitioner's opposed motion, made at the bar, for production of the three investigation reports prepared by the Investigating Officer dated 22 February, 18 July and 23 July 2018; thereafter, without production of the aforementioned reports requiring to be satisfied in these circumstances, reduces the aforementioned three investigation reports dated 22 February, 18 July and 23 July 2018;
- (iv.) finds the respondents liable to the petitioner:-
 - (a) in the expenses of the petition and proceedings following on from the order for commission and diligence pronounced in the interlocutor dated 14 December 2018, including the expenses of the open commission, all on an agent and client client paying scale; and
 - (b) except in so far as already dealt with, including as already dealt with in the foregoing expenses order of even date, in the expenses of the petition and proceedings;remits the account of expenses, when lodged, to the Auditor of Court to tax;
- (v.) allows the undertaking offered on behalf of the respondents to be recorded in the minute of proceedings of even date;
- (vi.) discharges the substantive hearing fixed for Tuesday 15 January 2019 and the ensuing three days;
- (vii.) quoad ultra dismisses the petition and decerns.

8 January 2019 Lord Pentland

The Lord Ordinary decerns against the respondents for payment to the petitioner of the expenses referred to in the foregoing interlocutor, of even date, as the same shall be taxed by the Auditor of Court.

Author: C Richardson

P850/18 Pet: Alex Salmond for J/R
DAC Beachcroft Scotland LLP

8 October 2018 Lord Woolman

The Lord Ordinary, in chambers and in light of the absence of Lord Pentland, having resumed consideration of the interim order granted by Lord Pentland on Thursday 4 October 2018, makes an order in terms of Chapter 102.3(5) of the Rules of Court withholding from the public in these proceedings the names and the designations, past and present, of the complainers referred to in the decision report which is the subject matter of this petition and any other information concerning those complainers which would lead to their identification; orders, in terms of section 11 of the Contempt of Court Act 1981, that no publication by any means, including on social media, of any of the aforementioned information relating to the complainers, be made; further, allows the complainers to be referred to as “Ms A” and “Ms B” respectively in the present proceedings.

Author: C Richardson Page 1 of 1

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 21 October 2020 12:43

To: [REDACTED]

Subject: FW: James Hamilton- Ministerial code referral

Dear [REDACTED]

I'm sending this e-mail to confirm that your query (below) has been forwarded to me and that I will respond to it as promptly as possible. On account of an impending deadline in another pressing matter, that will likely be next week. Hopefully that will not be a problem, but do let me know if it is.

I'd be happy to discuss any matters arising by phone on the number below.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: 07739 639257

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: Shawn McArthur <shawn.mcarthur@Advocates.org.uk>

Sent: 20 October 2020 17:33

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: FW: James Hamilton- Ministerial code referral

Dear Douglas,

Hope you are well.

I believe you have spoken with Jennifer previously about this case from SGLD.

In relation to [REDACTED] email below, please see attached email from Mr Salmond to Mr Hamilton, with attachments, and draft response from Mr Hamilton to Mr Salmond.

Kind regards

Shawn McArthur | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5616

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For the latest updates, please see our website [here](#).

From: [REDACTED]

Sent: 20 October 2020 17:28

To: Shawn McArthur <shawn.mcarthur@Advocates.org.uk>

Subject: RE: James Hamilton- Ministerial code referral

Hi Shawn,

Many thanks, I will get this information to you tomorrow morning.

Please see attached email from Mr Salmond to Mr Hamilton, with attachments, and draft response from Mr Hamilton to Mr Salmond.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

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Mr James Hamilton

Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

From: [REDACTED]
Sent: 06 October 2020 22:29
To: [REDACTED]
Cc: [REDACTED]
Subject: Mr James Hamilton

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

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least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

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As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

P850/18 Pet: Alex Salmond for J/R

DAC Beachcroft Scotland LLP

Scottish Government

8 January 2019

Lord Pentland

Act: Clancy, Q.C. et D. Hamilton
Advocate

Alt: R. Dunlop, Q.C. et C. O'Neill, Solicitor

The Lord Ordinary, having heard counsel, on the petitioner's motion, of consent, and in terms and in respect of the Joint Minute for parties No. 39 of process,:-

- (i.) finds and declares that the decisions of the first named respondent, viz. Leslie Evans, as set out in:-
 - (a) a Decision Report written by her dated 21 August 2018 entitled "Formal complaints against Former First Minister, Alex Salmond" (production No. 6/2 in the petitioner's First Inventory of Productions); and
 - (b) a letter from her to the petitioner's solicitors dated 22 August 2018 (production

No. 6/1 in the petitioner's First Inventory of Productions)

are unlawful in respect that they were taken in circumstances which were procedurally unfair and in respect that they were tainted by apparent bias by reason of the extent and effects of the Investigating Officer's involvement with aspects of the matters raised in the formal complaints against the petitioner prior to her appointment as Investigating Officer in respect of each of those complaints;

- (ii.) reduces the decisions of the first named respondent contained in the aforementioned Decision Report dated 21 August 2018 and letter dated 22 August 2018;
 - (iii.) refuses the petitioner's opposed motion, made at the bar, for production of the three investigation reports prepared by the Investigating Officer dated 22 February, 18 July and 23 July 2018; thereafter, without production of the aforementioned reports requiring to be satisfied in these circumstances, reduces the aforementioned three investigation reports dated 22 February, 18 July and 23 July 2018;
 - (iv.) finds the respondents liable to the petitioner:-
 - (a) in the expenses of the petition and proceedings following on from the order for commission and diligence pronounced in the interlocutor dated 14 December 2018, including the expenses of the open commission, all on an agent and client client paying scale; and
 - (b) except in so far as already dealt with, including as already dealt with in the foregoing expenses order of even date, in the expenses of the petition and proceedings;
- remits the account of expenses, when lodged, to the Auditor of Court to tax;
- (v.) allows the undertaking offered on behalf of the respondents to be recorded in the minute of proceedings of even date;
 - (vi.) discharges the substantive hearing fixed for Tuesday 15 January 2019 and the ensuing three days;
 - (vii.) quoad ultra dismisses the petition and decerns.

8 January 2019

Lord Pentland

The Lord Ordinary decerns against the respondents for payment to the petitioner of the expenses referred to in the foregoing interlocutor, of even date, as the same shall be taxed by the Auditor of Court.

Author: C Richardson

P850/18 Pet: Alex Salmond for J/R

DAC Beachcroft Scotland LLP

8 October 2018

Lord Woolman

The Lord Ordinary, in chambers and in light of the absence of Lord Pentland, having resumed consideration of the interim order granted by Lord Pentland on Thursday 4 October 2018, makes an order in terms of Chapter 102.3(5) of the Rules of Court withholding from the public in these proceedings the names and the designations, past and present, of the complainers referred to in the decision report which is the subject matter of this petition and any other information concerning those complainers which would lead to their identification; orders, in terms of section 11 of the Contempt of Court Act 1981, that no publication by any means, including on social media, of any of the aforementioned information relating to the complainers, be made; further, allows the complainers to be referred to as "Ms A" and "Ms B" respectively in the present proceedings.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FW: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Wed, 21 Oct 2020 09:36:26 +0000

Hi James,

The Permanent Secretary had indicated she intends to send further documents to supplement her response. This will take slightly longer than indicated due to staff illness- I will explain more next time we speak.

Best wishes,

[REDACTED]

From: [REDACTED] On Behalf Of Permanent Secretary
Sent: 20 October 2020 14:12
To: [REDACTED]
Cc: Permanent Secretary ; Bruce A (Andrew)
Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

Thank you for your time on our call earlier. Just to confirm what we discussed - we're still finalising the additional documents that Andy references below and will send this on soon as possible. Please send Mr Hamilton our apologies for the delay and I noted you will update him on the staffing health issue we discussed.

Best wishes

[REDACTED]

Private Secretary to the Permanent Secretary | [REDACTED] | [REDACTED]@gov.scot | I lead on
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2016. See www.lobbying.scot



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gov.scot



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makes you for
your consideration
Celebrate neurodiversity!



From: Bruce A (Andrew) <Andrew.Bruce@gov.scot>
Sent: 12 October 2020 14:03
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

Just a quick addition to the response I sent on behalf of the Permanent Secretary last week.

Paragraph 3 of the Permanent Secretary's letter refers to informing the First Minister of the outcome of the investigation of complaints against Mr Salmond at a meeting on 22 August 2018. However, the Permanent Secretary also sent the First Minister a written note on 22 August providing this information. I am just having that note prepared to be sent on to you, which I will do as soon as possible.

In addition, there was also some correspondence between the Permanent Secretary's private office and the First Minister's private office on 20 August 2018 setting out the likely timescales for the conclusion of the investigation. This followed the Permanent Secretary's letter to the First Minister on 17 August 2018. Again I will send this on to you with the document referenced above.

Apologies for this – it was an oversight on my part.

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]
andrew.bruce@gov.scot

From: Bruce A (Andrew) **On Behalf Of** Permanent Secretary
Sent: 07 October 2020 19:31
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

With apologies for the delay, please find attached the Permanent Secretary's response to Mr Hamilton's letter of 8 September.

Thanks

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]
andrew.bruce@gov.scot

From: Bruce A (Andrew) **On Behalf Of** Permanent Secretary
Sent: 06 October 2020 17:42
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: RE: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

[REDACTED]

The Permanent Secretary is just finalising her response to Mr Hamilton. However, I'm afraid she will not be in a position to send this today, but will send it by close of play tomorrow.
I hope this is OK and please do pass on her apologies to Mr Hamilton.

Best wishes

Andy

Andy Bruce
Principal Private Secretary to the Permanent Secretary
Scottish Government

[REDACTED]
andrew.bruce@gov.scot

From: [REDACTED] <[REDACTED]@gov.scot> **On Behalf Of** Permanent Secretary
Sent: 15 September 2020 11:41
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: Permanent Secretary <PermanentSecretary@gov.scot>
Subject: Correspondence to Perm Sec - FM Self Referral under Ministerial Code

Hello [REDACTED],

I would like to confirm receipt of James Hamilton's letter to the Permanent Secretary, which I note was copied to yourself. The Permanent Secretary will ensure she responds by the deadline set, 6th of October.

Best wishes,

[REDACTED] [REDACTED]
Private Secretary to the Permanent Secretary | [REDACTED] | [REDACTED]@gov.scot | I lead on
DG ECJ, DG HSC & DG ODO
Scottish Ministers, Special Advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act
2016. See www.lobbying.scot



From: James Hamilton [REDACTED]
Sent: 22 October 2020 11:02
To: [REDACTED]@gov.scot>
Subject: Re: FW: Mr James Hamilton

Dear [REDACTED]

Yes, the last paragraph is different. I am no longer giving him advice; just telling him what my approach is.

However, I seem to have dropped the reference to material sent to the Scottish parliament which i think you had inserted, and it probably should stay in. It was not included because it was not in my first draft but maybe you could put it back.

Do we need to discuss any of this? I should be at home all morning- I have a Zoom call at 2.00 pm which will probably last about an hour.

Best wishes

James

On Thu, 22 Oct 2020 at 10:06, wrote:
Hi James,

I just wanted to double check if this is what you intended to attach, as it looks like the same text as the first draft but I might be missing something!

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 20 October 2020 16:11
To: [REDACTED]
Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Please disregard uncompleted draft just sent to you in error.

I have done a further draft reply- attached.

James

On Tue, 20 Oct 2020 at 14:02, <[REDACTED]@gov.scot> wrote:
Hi James,

I've made some comments on the attached letter- I think that on the first point we can probably use some similar text to that in the first letter re. the legal clearance of the report [REDACTED]

I think the second point is a bit trickier as I don't think we can offer advice on what Mr Salmond may choose to do, only to note what you are intending to do. With that in mind, I've suggested adding a line with your previous committee correspondence, as this makes clear the intended position re. publishing evidence.

If you get a chance, would you be able to look at the suggested response to the committee today, so I can respond by close of play if possible?

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 19 October 2020 16:29
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Suggested reply to this further letter. [REDACTED]
[REDACTED]

Best wishes

James

On Mon, 19 Oct 2020 at 09:55, James Hamilton <[REDACTED]> wrote:
OK

On Sun 18 Oct 2020 at 13:24, <[REDACTED]e@gov.scot> wrote:
Further correspondence from Mr Salmond with an additional question to consider. If you think it would be appropriate, I will send a short email on Monday confirming you have received the correspondence, are considering the questions posed, and will respond in due course.

From: Alex Salmond <[REDACTED]>
Sent: 17 October 2020 12:34
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

Appendix 1

[REDACTED]

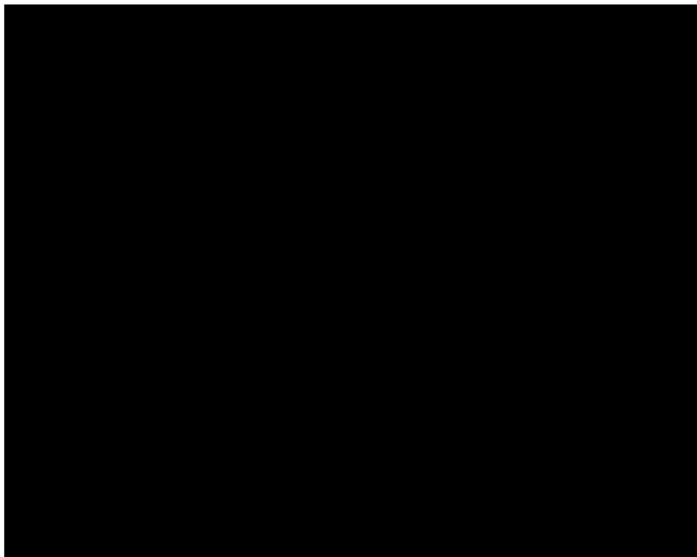
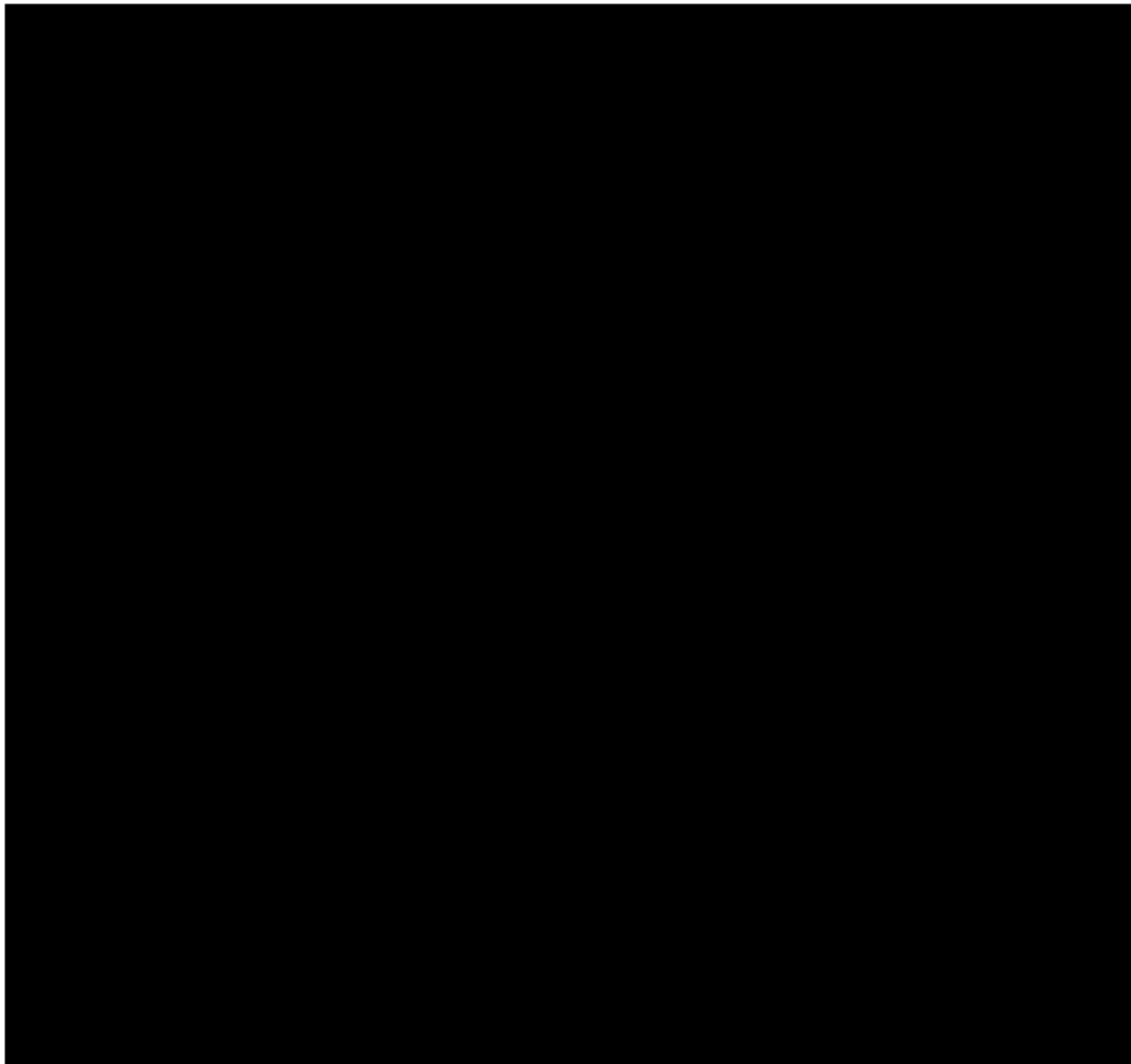
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



On 6 Oct 2020, at 22:28, Alex Salmond [REDACTED] wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

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Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

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Re: OFF SEN: Release of documents

From: James Hamilton <[REDACTED]@[REDACTED]>
To: Fraser L (Lesley) <lesley.fraser@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Date: Sun, 25 Oct 2020 10:43:47 +0000

Dear Ms Fraser

I have no objection to the release of the document attached to your email to the parliamentary committee.

Yours sincerely

James Hamilton

On Sat, 24 Oct 2020 at 16:39, wrote:

James,

Please see the attached letter and accompanying document.

Many thanks

Lesley

Lesley Fraser | Interim Director General
Organisational Development and Operations

Scottish Government | [REDACTED]

This mailbox is for my urgent personal attention only. Please send other mail to DGODO@gov.scot. I work Monday to Friday when the DG ODO inbox is normally covered from 8.45am-5pm. If you need an urgent response outside those hours, please call or text.

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Fwd: OFF SEN: Release of documents

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Mon, 26 Oct 2020 09:14:31 +0000
Attachments: Official Sensitive - Release of Documents - JH.pdf (153.3 kB); SP SGHHC - Timeline for Statement on FM self referral under Ministerial Code.pdf (528.63 kB)

----- Forwarded message -----

From: <Lesley.Fraser@gov.scot>
Date: Sat, 24 Oct 2020 at 16:39
Subject: OFF SEN: Release of documents
To: <[REDACTED]@[REDACTED]>

James,

Please see the attached letter and accompanying document.

Many thanks

Lesley

Lesley Fraser | Interim Director General
Organisational Development and Operations

Scottish Government | [REDACTED]

This mailbox is for my urgent personal attention only. Please send other mail to DGODO@gov.scot. I work Monday to Friday when the DG ODO inbox is normally covered from 8.45am-5pm. If you need an urgent response outside those hours, please call or text.

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Interim Director-General Organisational Development
and Operations
Lesley Fraser



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: [REDACTED]
E: DGOD0@gov.scot

James Hamilton

24 October 2020

Dear James

Scottish Parliament Harassment Committee: Release of Documents

I am writing to you in my capacity as the Scottish Government's Senior Information Risk Owner.

The Scottish Parliament Committee on the Scottish Government Handling of Harassment Complaints (the Committee) has asked for further information regarding a number of matters in its letters to the Scottish Government of 7¹ and 12² October 2020.

In advance of the Committee's next meeting on Tuesday 27th October, the Deputy First Minister will respond by letter to the Committee's letters and will provide further information (see attached timeline and documents). You are referred to by name in this information.

As with the release of previous tranches of documents to the Committee, we have undertaken a thorough process to ensure that the release of your personal data is in line with Data Protection Act requirements and the General Data Protection Regulation (GDPR). Under article 21 of the GDPR you have the right to object to the Scottish Government (as data controller) processing your data. If you wish to do so I would be grateful if you could let me know as soon as possible and before noon on Monday 26th October. Apologies for the tight timescale to consider.

Please don't hesitate to contact me if you have any questions.

Yours sincerely

[REDACTED]
Lesley Fraser
Interim DG Organisational Development & Operations

¹[https://www.parliament.scot/HarassmentComplaintsCommittee/General%20documents/20201007ConvenertoDFM_\(JR_timeline\).pdf](https://www.parliament.scot/HarassmentComplaintsCommittee/General%20documents/20201007ConvenertoDFM_(JR_timeline).pdf)

²[https://www.parliament.scot/HarassmentComplaintsCommittee/20201012ConvenertoLevyMcRae_with_attachments\(1\).pdf](https://www.parliament.scot/HarassmentComplaintsCommittee/20201012ConvenertoLevyMcRae_with_attachments(1).pdf)

Victoria Quay, Edinburgh EH6 6QQ
www.gov.scot



SCOTTISH GOVERNMENT WRITTEN STATEMENT ON THE SCOTTISH MINISTERIAL CODE AND THE EVENTS THAT LED TO THE FIRST MINISTER'S SELF REFERRAL UNDER THE CODE: CHRONOLOGY OF EVENTS

Date	Event and people involved	Relevant reference in Scottish Government written statement
August 1999	The first Scottish Ministerial Code ("the Code") was produced following the establishment of the then Scottish Executive. The core principles set out in the Code have been adopted by successive Administrations since 1999. The Code was, and remains, largely modelled on the UK Ministerial Code. This is also the case for the Welsh Government's Ministerial Code. Neither the UK Ministerial Code nor the Scottish or Welsh Codes has a basis in statute. The Code provides that "Scottish Ministers are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety". In addition to the Code, Ministers must also comply at all times with the requirements Parliament itself has laid down in relation to the accountability and responsibility of Ministers. All Ministers (both MSPs and Law Officers) are bound by the Interests of Members of the Scottish Parliament Act 2006, taken together with Section 39 of the Scotland Act 1998. Additionally, all MSPs, including those who are Ministers, must also adhere to the terms of the Code of Conduct for Members of the Scottish Parliament, which provides a set of principles and standards for MSPs and sets out the ethical standards expected of them in carrying out their Parliamentary duties.	Footnotes 2, 3, 6, and 8.

August 1999 to February 2018	By convention, the Code is revised following the commencement of each new Parliamentary term. It may also be revised when a new First Minister comes into office. The Code was revised following the appointment of Rt Hon Nicola Sturgeon MSP as First Minister in November 2014. In total, eight editions of the Code have been published since devolution: • August 1999; • February 2002; • August 2003; • June 2008; • December 2011; • June 2015; • August 2016; and • February 2018.	Annex A
February 2018	The current edition of the Scottish Ministerial Code was published.	Footnote 5
March-July 2018	A number of meetings and telephone calls took place which are set out in the remit being undertaken by the Independent Adviser on the Ministerial Code.	Footnotes 15 and 16
6 June 2018	The First Minister sent a note to the Permanent Secretary	Paragraph 18: document provided to the Committee
7 June 2018	The Permanent Secretary responded to the First Minister.	Paragraph 18: document provided to the Committee
17 August 2018	The Permanent Secretary sent a note to the First Minister.	Paragraph 18: document provided to the Committee
8 January 2019	In her statement to the Parliament on 8 January 2019, <i>Procedure for Handling Complaints Involving Current or Former Ministers (Judicial Review Conclusion)</i> , the First Minister provided Parliament with details of three meetings and two telephone conversations that she had with Mr Salmond during the course of 2018.	Footnote 11

8 and 10 January 2019	In responding to questions about her statement on 8 January, and at First Minister's Questions on 10 January 2019, the First Minister said that the meetings with Mr Salmond were not Government meetings and that she had participated in her capacity as leader of her party.	Footnote 12
13 January 2019	On 13 January 2019, the First Minister announced that she had referred herself to one or both of the Independent Advisers on the Ministerial Code in relation to the questions that had arisen about her contact with Mr Salmond during the Government's investigations into the complaints that had been made against him.	Footnote 13
31 January 2019	During the process of establishing the remit for the referral, Mr Salmond was charged with a series of criminal offences. In light of that development, and against the imperative of avoiding the risk of interfering with the criminal investigation and proceedings, the Deputy First Minister announced to Parliament by way of a written answer on 31 January 2019 that the Independent Adviser who would be conducting the referral had concluded that there was a potential risk of prejudice if the self-referral were to be proceeded with at that time. The referral was therefore paused at that stage, with the intention that it would be resumed when the criminal investigation and proceedings were no longer active and the risk of prejudice no longer arose.	Footnote 14

3 August 2020	The First Minister's self-referral under the Code was recommenced. The referral is being led by James Hamilton, who is a standing member of the panel of independent advisers. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013. Mr Hamilton was invited to commence the investigation and submit a report as soon as possible. The report will be published in line with the terms of the remit which is set out below: • review any relevant documentation relating to the meetings and discussions listed; • interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with; • interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions; • determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure; and • provide the Deputy First Minister with a report setting out the findings and conclusions with regard to: i) whether the Ministerial Code is engaged regarding the meetings and discussions; ii) whether there has been any breach of the Code and the nature of any such breach; and iii) if a breach has occurred, advice on the appropriate remedy or sanction. Mr Hamilton was further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.	Footnote 15
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3 August 2020	The Deputy First Minister wrote to the Convenor of the Committee on the Scottish Government Handling of Harassment Complaints to advise her that he would answer a Parliamentary Question later that day which would provide Parliament with: • an update on progress with the First Minister's decision to refer herself to the independent advisers on the Ministerial Code; • set out the remit for the referral; and • confirm that James Hamilton, one of the standing members of the panel of independent advisers would take forward the referral.	Footnote 16
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From: James Hamilton [REDACTED]
Sent: 27 October 2020 22:46
To: [REDACTED]@gov.scot>
Subject: Re: Scottish Parliament Committee- publication of correspondence

Thanks, [REDACTED]. We need to focus on solutions!

James

On Tue 27 Oct 2020 at 22:16, wrote:

Hi James,

10am would work for me. Speak to you then.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]
Sent: 27 October 2020 22:12
To: [REDACTED]
Subject: Re: Scottish Parliament Committee- publication of correspondence

[REDACTED]

Maybe if we talk on the phone at 10.00 tomorrow.

I need to send a substantive reply to Mr Salmond tomorrow with or without [REDACTED] advice.

I am inclined to look for a response in two weeks time.

James

On Tue 27 Oct 2020 at 21:36, <[REDACTED]@gov.scot> wrote:

Further to my previous email, I've done some digging and this was published today I think- it has only just hit twitter.

<https://twitter.com/BBCPhilipSim/status/1321202240397389826?s=20>

From: [REDACTED]
Sent: 27 October 2020 21:15
To: 'James Hamilton' [REDACTED]
Subject: RE: Scottish Parliament Committee- publication of correspondence

No problem- this is the direct link:

https://www.parliament.scot/HarassmentComplaintsCommittee/EMAIL_FROM_ALEX_SALMOND.pdf

From: James Hamilton [REDACTED]
Sent: 27 October 2020 21:12
To: [REDACTED]@gov.scot>
Subject: Re: Scottish Parliament Committee- publication of correspondence

Hi [REDACTED]

Will look at it in the morning!

Best wishes

James

On Tue 27 Oct 2020 at 21:07, <[REDACTED]@gov.scot> wrote:

Hi James,

Just wanted to let you know that Mr Salmond has sent a further email to the SP Committee which they have published on their website, including the response to your initial letter- see link below.

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/116245.aspx>

I'm not sure when this was published but the email is dated October 17 so it may have been up for a while.

It was an oversight on my part not to acknowledge the initial email from Mr Salmond, and as discussed last week I have now done this. I will make sure I do that in future for any emails from Mr Salmond. [REDACTED] is considering the substantive reply (he was in touch earlier today) so that should be ready soon.

Best wishes,

[REDACTED]

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From: James Hamilton [REDACTED]
Sent: 28 October 2020 15:20
To: [REDACTED]@gov.scot>
Subject: Re: Updated response to Mr Salmond

Hi [REDACTED]

I have redrafted the proposed letter to Mr Aberdeen.

You have the advantage of me in that you have seen the material and I have not.

What concerns me is that there is no guarantee that all this might end in litigation at some point so I do not want to give any undertakings which I might not be able to keep.

[REDACTED]

If you need to discuss further you can phone me.

Best wishes

James

On Wed, 28 Oct 2020 at 13:48, wrote:
Dear James,

Please see attached updated correspondence with Mr Salmond. I have combined the letters, added a short intro and the content at the end about timings. I intend to offer an apology for the delay in acknowledging the email in the covering email as well if that's ok?

[REDACTED]

I have also included some text below to respond to Mr Aberdeen.

Best wishes,

[REDACTED]

Dear Mr Aberdeen,

Thank you for your email. I can confirm that Mr Hamilton has received your submission.

Mr Hamilton is intending to conduct his work on a confidential basis and submissions made to him will be used for the purposes of his deliberations and not shared with other parties. He will however be preparing a final report for publication, and information included in submissions may be included in or referred to in that report as appropriate. Mr Hamilton is also ensuring that the report is consistent with the relevant court orders on these matters.

Please let me know if you need any more information.

Best wishes,



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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Attachments area

From: James Hamilton [REDACTED]
Sent: 28 October 2020 14:47
To: [REDACTED]@gov.scot>
Subject: Re: Updated response to Mr Salmond

Dear [REDACTED]

I think the draft letter to Mr Salmond is OK.

I will respond separately concerning the other letter.

Best wishes

James

On Wed, 28 Oct 2020 at 13:48, wrote:

Dear James,

Please see attached updated correspondence with Mr Salmond. I have combined the letters, added a short intro and the content at the end about timings. I intend to offer an apology for the delay in acknowledging the email in the covering email as well if that's ok?

[REDACTED] is hoping to provide brief comments on the approach by close of play today, so if we send the response this evening it will hopefully be with some legal input.

I have also included some text below to respond to Mr Aberdeen.

Best wishes,

[REDACTED]

Dear Mr Aberdeen,

Thank you for your email. I can confirm that Mr Hamilton has received your submission.

Mr Hamilton is intending to conduct his work on a confidential basis and submissions made to him will be used for the purposes of his deliberations and not shared with other parties. He will however be preparing a final report for publication, and information included in submissions may be included in or referred to in that report as appropriate. Mr Hamilton is also ensuring that the report is consistent with the relevant court orders on these matters.

Please let me know if you need any more information.

Best wishes,



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From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 28 October 2020 11:55

To: [REDACTED]@gov.scot>

Subject: RE: James Hamilton- Ministerial code referral

Dear [REDACTED]

I tried calling but didn't get an answer. Am free for a chat any time over the next hour or so then have a meeting at 1.30 which should be over by about 3.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED]@gov.scot

Sent: 28 October 2020 10:44

To: Douglas Ross

Subject: RE: James Hamilton- Ministerial code referral

Dear Douglas,

Many thanks. Would it be possible to have a quick chat about this sometime today?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 28 October 2020 08:28

To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Subject: RE: James Hamilton- Ministerial code referral

Dear [REDACTED]

Thank you for these two e-mails. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to discuss any matters arising.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 27 October 2020 21:42
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Dear Douglas,

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 27 October 2020 16:54
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Dear Douglas,

Many thanks, and apologies for not supplying this with the original material. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 27 October 2020 15:16
To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Subject: RE: James Hamilton- Ministerial code referral

Dear [REDACTED]

I am starting to look at this now. [REDACTED]

[REDACTED]

Many thanks

Douglas

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>
Sent: 22 October 2020 10:23
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: James Hamilton- Ministerial code referral

Dear Douglas,

Many thanks for confirming. If you were able to get comments back to us next week that would be great.

If you have any questions please feel free to get in touch, either by email or by phone.

Best wishes,

[REDACTED]

[REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code
| Please contact me on Skype or on [REDACTED].

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 21 October 2020 12:43

To: [REDACTED]@gov.scot>
Subject: FW: James Hamilton- Ministerial code referral

Dear [REDACTED]

I'm sending this e-mail to confirm that your query (below) has been forwarded to me and that I will respond to it as promptly as possible. On account of an impending deadline in another pressing matter, that will likely be next week. Hopefully that will not be a problem, but do let me know if it is.

I'd be happy to discuss any matters arising by phone on the number below.

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: Shawn McArthur [REDACTED]
Sent: 20 October 2020 17:33
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: FW: James Hamilton- Ministerial code referral

Dear Douglas,

Hope you are well.

I believe you have spoken with Jennifer previously about this case from SGLD.

In relation to [REDACTED] email below, [REDACTED]
[REDACTED]

Kind regards

Shawn McArthur | Deputy Advocates' Clerk | Ampersand Advocates | 0131 260 5616

COVID-19 – Ampersand remains open for business but with some changes to how we work. For the latest updates, please see our website [here](#).

From: [REDACTED]@gov.scot>
Sent: 20 October 2020 17:28
To: Shawn McArthur [REDACTED]
Subject: RE: James Hamilton- Ministerial code referral

Hi Shawn,

Many thanks, I will get this information to you tomorrow morning.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

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From: James Hamilton [REDACTED]
Sent: 29 October 2020 10:40
To: [REDACTED]@gov.scot>
Subject: Re: Request for advice

Dear [REDACTED]

I have gone through the draft reply as amended by you [REDACTED] you can expand this further to add the date of the deputy First Minister's statement it would be helpful. I attach my amended draft. It might be useful if we have a brief word on the phone before we sign off. I am available from now until 12.noon. Thereafter I am not free until after 3.00pm.

[REDACTED] I think it would be prudent to assume that anything I write in correspondence will end up in the media so I do not propose to make any requests of Mr. Salmond in this regard.

Best wishes

James

On Wed, 28 Oct 2020 at 18:33, James Hamilton [REDACTED] wrote:
I am inclined to leave it until the morning now! Better to read it again when my brain is fresher.
J

On Wed 28 Oct 2020 at 18:24, wrote:
I've now had a chance to consider the points in detail. [REDACTED]
[REDACTED]
I have added something in the attached.

From: [REDACTED]
Sent: 28 October 2020 17:56
To: 'James Hamilton' [REDACTED]
Subject: FW: Request for advice
Importance: High

From Mr Ross. Just reading it now.

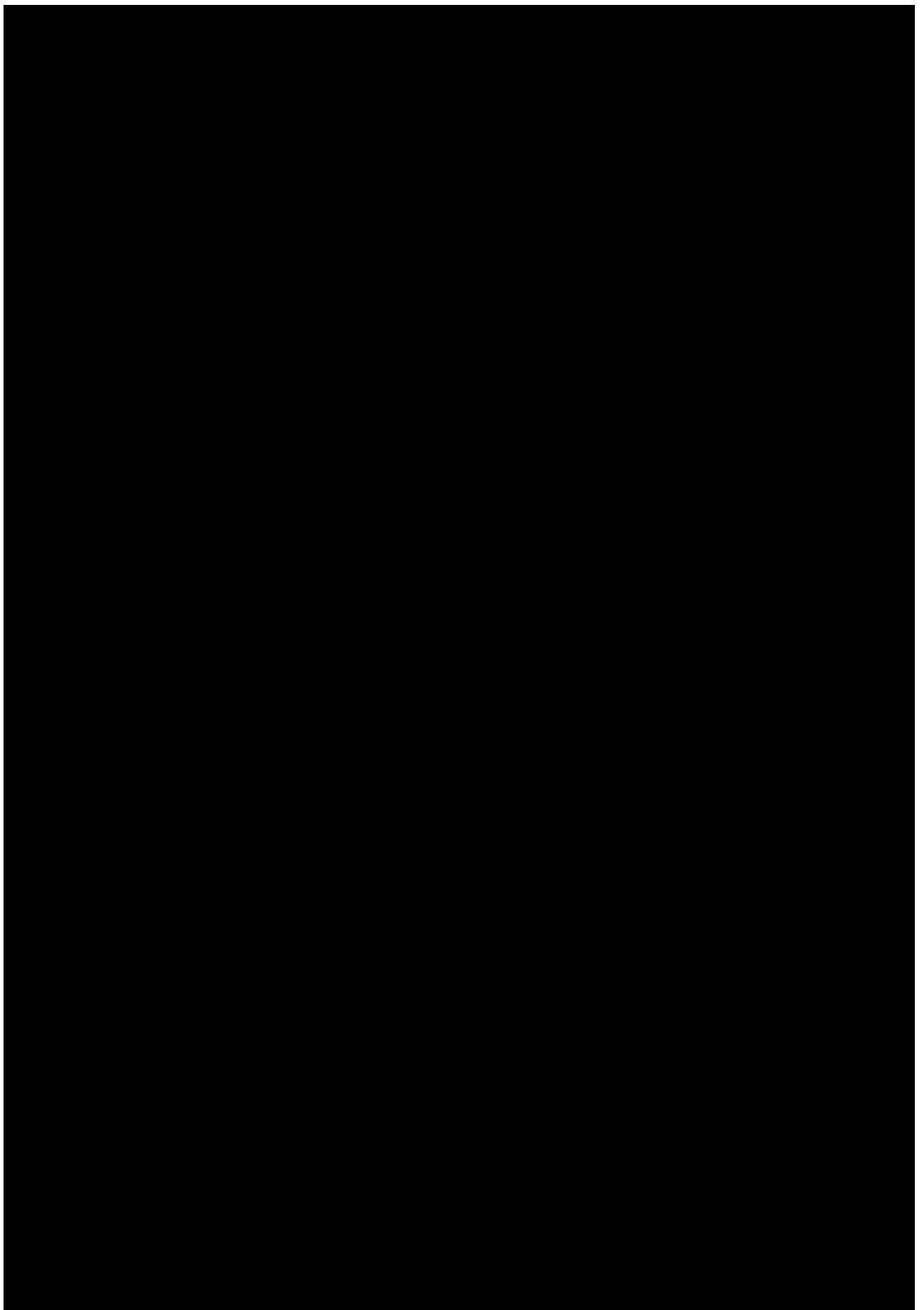
From: Douglas Ross [REDACTED]
Sent: 28 October 2020 17:55
To: [REDACTED]@gov.scot>
Subject: Request for advice
Importance: High

Dear [REDACTED]

[REDACTED] of e-mails, I offer the following observations.

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RE: First Minister's self- referral

From: [REDACTED] <[REDACTED]@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>
Date: Thu, 29 Oct 2020 09:13:26 +0000
Attachments: Ministerial code remit.docx (15.53 kB)

Hi [REDACTED],

I've attached some text that sets out some further information on this.

Can I just check- are you looking for this to be turned into an FMQ note?

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 29 October 2020 06:04
To: Hynd JS (James) ; [REDACTED]
Cc: [REDACTED] ; Rogers D (David) (Constitution and Cabinet Director)
Subject: RE: First Minister's self- referral

Thanks James.

[REDACTED] - happy to look at what you have in due course and to speak in the morning if helpful.

FM will be in around 8.30, so anything you can get me by then would be welcome.

Thanks all for picking up out of hours.

[REDACTED]

Sent with BlackBerry Work
(www.blackberry.com)

From: Hynd JS (James) <James.Hynd@gov.scot>
Date: Wednesday, 28 Oct 2020, 10:07 pm
To: [REDACTED] <[REDACTED]@gov.scot>, [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Subject: RE: First Minister's self- referral

[REDACTED]

I have sent you over some publicly available material. As we discussed, I am no longer playing an active part in the referral process. [REDACTED] is heading up the Secretariat support to Mr Hamilton. I spoke to [REDACTED] a short while ago and asked her to provide the further information regarding the remit that you have asked for. [REDACTED] is aware of the timing pressures.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 28 October 2020 20:21
To: Hynd JS (James) <James.Hynd@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: First Minister's self- referral

Thanks James this is welcome.

If you need me to request the remainder of others, then do let me know.

All the best,

[REDACTED]

Sent with BlackBerry Work
(www.blackberry.com)

From: Hynd JS (James) <James.Hynd@gov.scot>
Date: Wednesday, 28 Oct 2020, 7:30 pm
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: First Minister's self- referral

[REDACTED]

I have sent on the Conservative NR separately.

Here is the remit in standalone form.

I will consider the other points you have asked about.

As you know, I am no longer supporting Mr Hamilton in the referral process

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 28 October 2020 19:08
To: Hynd JS (James) <James.Hynd@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: First Minister's self-referral

James,

Thanks for this – and for taking my call. Sorry to come back with a further ask. I understand that there is a standalone document setting out the remit (i.e. not formatted as a GIQ) could you send that on to me please?

Secondly, I am looking for some lines which set-out the gist of what we discussed around the scope of the remit. Firstly, making clear that the issue of the meetings is within current scope (contrary to the claims of Mr Salmond) and then secondly how any widening of scope would be handled, making clear that this is possible (contrary to claims in the media the last couple of days).

I think there was also a conservative news release on this today. I'll try to get hold of that, but if you have it to hand then I'd also welcome sight of that.

I will be travelling on and off in the next hour, but will be online again after that.

Where possible I'd welcome as much of this tonight as is feasible in the circumstances.

With thanks again and best wishes,

[REDACTED]

From: Hynd JS (James) <James.Hynd@gov.scot>
Sent: 28 October 2020 18:49
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: FW: First Minister's self-referral

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: Hynd JS (James)
Sent: 27 October 2020 22:19
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>
Cc: McAllister C (Colin) <Colin.McAllister@gov.scot> [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Subject: RE: First Minister's self- referral

[REDACTED]

Here is the text of the GIQ answer that set out the remit, dated 3 August.

I am copying in [REDACTED] [REDACTED] who now heads up the secretariat for the referral.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [REDACTED]
[REDACTED]

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 27 October 2020 22:08
To: Johnston P (Paul) <Paul.Johnston@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: First Minister's self- referral

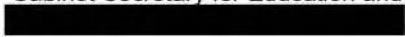
Evening,

Apologies for the late hour of this email.

The DFM has asked for a copy of the finalised remit for James Hamilton.

He asked for this information tonight.

Thanks

 | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot | Tel:  | Email: DFMCSE@gov.scot

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Extract from Alex Salmond's letter of 6 October to James Hamilton – as published on the Committee website

'Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down.

There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set?

If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?'

Key Points

- FM has delegated to DFM full responsibility for matters relating to the Ministerial Code referral being undertaken by James Hamilton.
- The focus of the remit given to Mr Hamilton relates to the meetings between the FM and the FFM. The specific question he has been asked to address is whether FM breached the sections of the Code relating to the reporting of meetings at which SG business is discussed (sections 4.22 and 4.23).
- This remit reflects the specific allegations raised by Opposition parties that this part of the Code was breached by the FM.
- In delivering the remit he has been given, Mr Hamilton can be expected to consider any other aspects of the Ministerial Code that are directly relevant to the remit. However, he is very unlikely to consider the issues raised by FFM as being matters connected to the remit he has been given.
- It would therefore require a formal adjustment and extension of the remit to bring within scope the issues identified by the FFM. In process terms, it would be relatively straightforward to adjust the remit if DFM considered that this would be desirable.
- However, this would need to be discussed and agreed with Mr Hamilton. Given that Mr Hamilton is undertaking this work on an unpaid basis, and has a range of competing work commitments, there would be no guarantee that he

would be willing to commit additional time beyond what he has signed up to do.

- Mr Hamilton is still considering his response to Mr Salmond's letter. He understands the scope of the remit, and the process for any extension of the remit as set out above, and his response will be prepared in that context.

RE: Scottish Ministerial Code

From: [REDACTED] </o=tse/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=[REDACTED]>
To: Geoff Aberdein <[REDACTED]>
Date: Fri, 30 Oct 2020 09:01:23 +0000

Dear Geoff,

I am emailing to confirm that this email has been received. In terms of your question about how the submission will be used, Mr Hamilton will prepare a more detailed response setting out how he will use the written submissions in the preparation of his report, and I will send that over in due course.

Best wishes,

[REDACTED]

From: Geoff Aberdein <[REDACTED]>
Sent: 28 October 2020 10:30
To: [REDACTED] <[REDACTED].[REDACTED]@gov.scot>
Subject: Re: Scottish Ministerial Code

[REDACTED],

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

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Re: FMQs yesterday

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Mon, 02 Nov 2020 10:07:47 +0000
Attachments: Draft letter to First Minister 2.11.2020.docx (8.69 kB)

I attach a possible draft letter to be sent to the First Minister.

James

On Mon, 2 Nov 2020 at 09:30, wrote:

Excellent, speak to you then. I managed to speak to a couple of colleagues late on Friday to clarify the FMQ comments and the conclusion is that there is no real change to the remit as initially set, and the procedure for extending the remit. I will explain more when we speak later.

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 02 November 2020 09:27
To: [REDACTED]
Subject: Re: FMQs yesterday

Hi [REDACTED]

13.30 would suit me. I will send a further email to you before then.

James

On Mon, 2 Nov 2020 at 09:13, <[REDACTED]@gov.scot> wrote:

Hi James,

Hope you had a good weekend! Things have been a bit fraught here given the UKG announcement on lockdown but things are hopefully settling down a bit today.

I just wanted to check what time would suit you for a quick catch up? I'm free from 13.30 until 3, and then after 4pm.

I'm also free all morning tomorrow.

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 30 October 2020 09:58
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: FMQs yesterday

Hi [REDACTED]

Thanks, I really needed this!

The first reaction is that I will need to write further to AS.

Anyhow, no harm to think through the implications.

We can talk on Monday. I would hate to spoil your weekend!

Best wishes

James

On Fri, 30 Oct 2020 at 09:00, <[REDACTED]@gov.scot> wrote:

Hi James,

I just wanted to draw your attention to the FM's response to a question about the Ministerial code referral at FMQs yesterday. I have copied the text and attached a link to the official report. This puts a slightly different slant on some of the issues we discussed earlier in the week. Would it be ok to discuss on early next week?

Best wishes,

[REDACTED]

• **Oliver Mundell (Dumfriesshire) (Con):**

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

- **The First Minister (Nicola Sturgeon):**

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

<https://www.parliament.scot/parliamentarybusiness/report.aspx?r=12902>

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Draft letter to First Minister

I refer to your statement in the Scottish Parliament on Thursday 29 October in reply to a question from Mr Oliver Mundell.

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

I think it is important that I have a clear remit for the enquiry. My present remit is perfectly clear. I have no objection to widening it if that is your wish. However, I think it has to be a decision for you as should be the scope of any widened terms of reference. It does not seem to me to be workable for me to proceed on the basis that I have terms of reference but if I come across matters outside those terms which might constitute a breach of some other provision of the code I could add it on. It would not be possible for me to request witnesses to give me evidence on that basis. What would I ask them to give me evidence about? How could I form a view on whether evidence was relevant? How could I place any limitation at all on the scope of the enquiry?

It would be perfectly possible to expand the terms to include the additional matters referred to in Mr Mundell's question if that is your preferred option, or there may be some other formula you would prefer. From a practical point of view if the remit is expanded I will have to ask witnesses if they wish to address these issues and there may be other witnesses with relevant evidence so this will have the effect of prolonging matters although I would do my best to minimise this.

From: James Hamilton [REDACTED]
Sent: 02 November 2020 14:25
To: [REDACTED]@gov.scot>
Subject: Enquiry remit

Dear [REDACTED]

Further to our discussion on the phone I think if I have to send a letter seeking clarification it should be to the Deputy First Minister rather than the First Minister. As I understand that there are further parliamentary questions due for answer there may be a chance to clarify matters without any intervention on my part which I think would be the better option. However there is a certain urgency as it is likely I will be put under pressure to make my own views known very soon.

[REDACTED]

Best wishes

James

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—

RE: FMQs yesterday

From: [REDACTED] <[REDACTED]@gov.scot>
To: James Hamilton <[REDACTED]@[REDACTED]>
Date: Mon, 02 Nov 2020 09:30:02 +0000

Excellent, speak to you then. I managed to speak to a couple of colleagues late on Friday to clarify the FMQ comments and the conclusion is that there is no real change to the remit as initially set, and the procedure for extending the remit. I will explain more when we speak later.

From: James Hamilton
Sent: 02 November 2020 09:27
To: [REDACTED]
Subject: Re: FMQs yesterday

Hi [REDACTED]

13.30 would suit me. I will send a further email to you before then.

James

On Mon, 2 Nov 2020 at 09:13, <[REDACTED]@gov.scot> wrote:

Hi James,

Hope you had a good weekend! Things have been a bit fraught here given the UKG announcement on lockdown but things are hopefully settling down a bit today.

I just wanted to check what time would suit you for a quick catch up? I'm free from 13.30 until 3, and then after 4pm.

I'm also free all morning tomorrow.

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]@[REDACTED]>
Sent: 30 October 2020 09:58
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: Re: FMQs yesterday

Hi [REDACTED]

Thanks, I really needed this!
The first reaction is that I will need to write further to AS.
Anyhow, no harm to think through the implications.
We can talk on Monday. I would hate to spoil your weekend!

Best wishes

James

On Fri, 30 Oct 2020 at 09:00, <[REDACTED]@gov.scot> wrote:

Hi James,

I just wanted to draw your attention to the FM's response to a question about the Ministerial code referral at FMQs yesterday. I have copied the text and attached a link to the official report. This puts a slightly different slant on some of the issues we discussed earlier in the week. Would it be ok to discuss on early next week?

Best wishes,



- **Oliver Mundell (Dumfriesshire) (Con):**

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

- **The First Minister (Nicola Sturgeon):**

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

<https://www.parliament.scot/parliamentarybusiness/report.aspx?r=12902>

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PQs- Ministerial Code referral- answers and background note for comment

From: [REDACTED] <[REDACTED]@gov.scot>
To: Henderson G (Gavin) <gavin.henderson@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>
Cc: [REDACTED] <[REDACTED]@transport.gov.scot>
Date: Mon, 02 Nov 2020 21:42:39 +0000
Attachments: Background note for ministerial code PQs.docx (15.99 kB)

Hi everyone,

As you will know, there are 4 PQs from Alex Cole-Hamilton on the Ministerial code referral due for response. The PO deadline for these is tomorrow.

The questions are as follows:

S5W-32469 To ask the Scottish Government what discretion the independent adviser of the Scottish Ministerial Code, James Hamilton, has in his role to extend the remit of his investigation in the event that evidence comes to light of possible further breaches of the Code. 03/11/2020 10/11/2020
S5W-32470 To ask the Scottish Government whether the referral of the First Minister to the independent adviser of the Scottish Ministerial Code, James Hamilton, includes within its remit for him to ascertain whether she misled the Parliament at any point in respect of (a) her meetings regarding the Scottish Government investigation of Alex Salmond, (b) the timeline of her knowledge of complaints against him and (c) when she first knew that those complaints were subject to the Scottish Government's complaints handling procedure. 03/11/2020 10/11/2020
S5W-32471 To ask the Scottish Government how the Parliament can amend the remit of the Ministerial Code referral of the First Minister to ascertain (a) whether she misled the Parliament over her meetings with Alex Salmond, (b) the timeline of her knowledge of complaints against him and (c) when she first knew that the complaints were subject to the Scottish Government's complaints handling procedure. 03/11/2020 10/11/2020
S5W-32472 To ask the Scottish Government whether the independent adviser of the Scottish Ministerial Code, James Hamilton, in his role regarding the referral of the First Minister, is limited solely to the remit detailed in the answer to question S5W-31054 by John Swinney on 3 August 2020.

As the PQs address the same set of issues from slightly different angles, I have prepared one answer which I suggest would be used for all the questions. I have also prepared a short background note (with contribution from Lorraine), which would again be common to all the questions.

Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

Could you let me know of any comments on the approach, the answer, or the background note, by 3 pm tomorrow.

Best wishes,



BACKGROUND NOTE FOR S5W-32469

(To be completed as necessary with any additional information)

1. Alex Cole-Hamilton MSP is a Scottish Liberal Democrats member for Edinburgh Western.
2. Mr Cole-Hamilton is a member of the Committee on the Scottish Government Handling of Harassment Complaints, a member of the Health and Sport Committee, deputy convenor of the Equalities and Human Rights Committee, and substitute member for the Rural Economy and Connectivity Committee.
3. Mr James Hamilton, the Independent Adviser on the Code, is taking forward work on the First Minister's self referral under the Ministerial Code. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.
4. The remit for the Ministerial Code referral is set out in the answer to PQ S5W 31054, and is as follows:
 1. Review any relevant documentation relating to the meetings and discussions listed above.
 2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
 3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
 4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
 5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
 6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.
5. Mr Cole-Hamilton has used Twitter to call for the remit of the Referral to be extended, as set out in the following tweet from 12/10/20 (when PQ's were lodged):

"Given where Salmond Inquiry evidence is taking our committee, I believe that the original remit of the ministerial code referral (around recording of meetings

between FM & Alex Salmond under sec 4.22/4.23 & whether FM tried to influence investigation) is no longer sufficient".

Contact Name:

[REDACTED]

Ext:

[REDACTED]

RE: PQs - Alex Cole Hamilton

From: [REDACTED] <[REDACTED]@gov.scot>
To: [REDACTED] <[REDACTED]@gov.scot>, [REDACTED]
<[REDACTED]@transport.gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>
Date: Mon, 02 Nov 2020 14:13:30 +0000
Attachments: contribution to background notes for PQ's.docx (22.32 kB)

Hi [REDACTED]

Please find attached a contribution to the background note for Alex Cole Hamilton PQ's.

You may decide not to use it all but gives you some idea of the media messages

Regards

[REDACTED] | Briefing Officer | Organisational Continuity Team
Mobile: [REDACTED]

From: [REDACTED]
Sent: 02 November 2020 09:05
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]
Subject: RE: PQs - Alex Cole Hamilton

Hi [REDACTED]

Many thanks for offering to help with this.

I'm making a start on the background notes for these PQs so if you have any relevant background on Mr Cole Hamilton's role on the Committee, his areas of interests, or anything else you think would be helpful here, would it be ok to send it to me by 1pm?

I'm intending to get the PQs round for comment this afternoon.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@transport.gov.scot>
Sent: 29 October 2020 16:23
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>; [REDACTED]
<[REDACTED]@gov.scot>
Subject: RE: PQs - Alex Cole Hamilton

Hi [REDACTED]

We are happy to think about some of the wider context including considering AC-H's Committee role and engagement to date around this area. You will note that the previous question referenced in his third PQ was from Clare Adamson in August requesting an update on progress with the First Minister's self-referral under the Scottish Ministerial Code and was handled by James Hynd.

To note our DD Gavin Henderson will wish to be sighted on responses and on clearance for these.

Regards

[REDACTED]

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 28 October 2020 16:31
To: [REDACTED] <[REDACTED]@transport.gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: PQs - Alex Cole Hamilton

Hi [REDACTED]

Thanks for getting in touch. I think I may wish to seek some information on the wider context for the background notes. I'm intending to spend some time on this on Friday so would probably contact you then.

Best wishes,

[REDACTED]

From: [REDACTED] <[REDACTED]@transport.gov.scot>
Sent: 28 October 2020 15:53
To: [REDACTED] <[REDACTED]@gov.scot>
Cc: [REDACTED] <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@gov.scot>
Subject: PQs - Alex Cole Hamilton

Hi [REDACTED]

I have just joined the organisational continuity team work working with [REDACTED] and [REDACTED] and I understand you are leading on support to the independent review. I note you have been allocated a number of PQs from Alex Cole Hamilton on this and wanted to check whether you need any lines or support from us on these. Please just let me know.

Regards

[REDACTED]

[REDACTED] [REDACTED]
Organisational Continuity
Blackberry [REDACTED]

Ministerial Code Referral- PQs and correspondence for clearance

From: [REDACTED]@gov.scot>
To: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>,
McAllister C (Colin) <colin.mcallister@gov.scot>
Date: Tue, 03 Nov 2020 20:34:24 +0000
Attachments: Submission on remit for independent advisor - November 2020 as sent for
clearance.docx (34.09 kB)

Hi [REDACTED]

\~

Slightly earlier than discussed, please see attached submission on the Ministerial
Code Referral. I will also send the PQs referred to in the submission up via the
PQ system.

\~

At the moment the letter isn't in the correct letter template as I had trouble
locating a word version of it - if you were ok to send the correct template over to
me I will sort that out.

\~

Happy to discuss.

\~

Best wishes,

\~

[REDACTED]

OFFICIAL/SENSITIVE


Secretariat to Independent Adviser
November 2020

Deputy First Minister

INDEPENDENT ADVISER ON THE MINISTERIAL CODE: REMIT

Purpose

1. To seek views on:
 - A proposed letter to Mr Hamilton
 - Draft answers to 4 parliamentary questions lodged by Mr Cole- Hamilton, and due for response by 10 November.

Timing

2. Urgent. A response by 5 November would be helpful to allow correspondence to Mr Hamilton to be issued before the relevant PQs are answered.

Background

3. On 29 October the First Minister made the following remarks at FMQs, in response to a question from Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con):

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

The First Minister (Nicola Sturgeon):

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

[APG]

OFFICIAL/SENSITIVE

4. A number of parliamentary questions concerning the remit of the Code referral, and process for adjusting the remit, have been lodged by Alex Cole-Hamilton.

PQ answers

5. An answer to Mr Cole-Hamilton's PQs is provided in Annex A of this submission. We propose to provide the same answer to all of the questions, setting out that Mr Hamilton can investigate any aspects of the Ministerial Code that arise within his remit.

6. These PQ answers have also been submitted via the PQ system.

7. **Are you content with the PQ answers as drafted?**

Letter to Mr Hamilton

8. The First Minister's remarks have received a degree of media attention. It has been assumed by some commentators that the remarks mean that Mr Hamilton is at liberty to extend the remit of the Code referral in any way he sees fit.

9. On that basis, it would be helpful for you to write to Mr Hamilton to draw his attention to the proposed answers to Mr Cole-Hamilton's PQs, and ensure that there is a common understanding as regards these matters.

10. **Are you content to send the attached correspondence to Mr Hamilton?**

Conclusion

11. Can you please advise me:

- If you are content to answer Mr Cole-Hamilton's PQs as set out in Annex A.
- If you are content to write to Mr Hamilton as set out in Annex B.


November 2020

[APG]

OFFICIAL/SENSITIVE

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David Rogers Colin McAllister

[APG]

OFFICIAL/SENSITIVE

Annex A: PQ answer

S5W-32469 To ask the Scottish Government what discretion the independent adviser of the Scottish Ministerial Code, James Hamilton, has in his role to extend the remit of his investigation in the event that evidence comes to light of possible further breaches of the Code.

S5W-32470 To ask the Scottish Government whether the referral of the First Minister to the independent adviser of the Scottish Ministerial Code, James Hamilton, includes within its remit for him to ascertain whether she misled the Parliament at any point in respect of (a) her meetings regarding the Scottish Government investigation of Alex Salmond, (b) the timeline of her knowledge of complaints against him and (c) when she first knew that those complaints were subject to the Scottish Government's complaints handling procedure.

S5W-32471 To ask the Scottish Government how the Parliament can amend the remit of the Ministerial Code referral of the First Minister to ascertain (a) whether she misled the Parliament over her meetings with Alex Salmond, (b) the timeline of her knowledge of complaints against him and (c) when she first knew that the complaints were subject to the Scottish Government's complaints handling procedure. 03/11/2020 10/11/2020

S5W-32472 To ask the Scottish Government whether the independent adviser of the Scottish Ministerial Code, James Hamilton, in his role regarding the referral of the First Minister, is limited solely to the remit detailed in the answer to question S5W-31054 by John Swinney on 3 August 2020.

Answer: Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

[APG]

OFFICIAL/SENSITIVE

Annex B

James Hamilton

By email to: [REDACTED]

5 November 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the work you are doing on the First Minister's self-referral under the Minister Code.

As you will be aware, the First Minister made the following remarks at First Ministers Questions on 29 October in response to a question from Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con):

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

The First Minister (Nicola Sturgeon):

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[APG]

OFFICIAL/SENSITIVE

The Scottish Government has also been asked a number of Parliamentary questions by Alex Cole-Hamilton about the remit of the Code Referral.

I plan to answer the Parliamentary Questions as follows.

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This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to discuss this further

Yours sincerely

John Swinney
Deputy First Minister

[APG]

From: [REDACTED]

Sent: 03 November 2020 20:34

To: Deputy First Minister and Cabinet Secretary for Education and Skills
<DFMCSE@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>;
McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: Ministerial Code Referral- PQs and correspondence for clearance

Hi [REDACTED]

Slightly earlier than discussed, please see attached submission on the Ministerial Code Referral. I will also send the PQs referred to in the submission up via the PQ system.

At the moment the letter isn't in the correct letter template as I had trouble locating a word version of it - if you were ok to send the correct template over to me I will sort that out.

Happy to discuss.

Best wishes,

[REDACTED]

Deputy First Minister

INDEPENDENT ADVISER ON THE MINISTERIAL CODE: REMIT

Purpose

1. To seek views on:
 - A proposed letter to Mr Hamilton
 - Draft answers to 4 parliamentary questions lodged by Mr Cole- Hamilton, and due for response by 10 November.

Timing

2. Urgent. A response by 5 November would be helpful to allow correspondence to Mr Hamilton to be issued before the relevant PQs are answered.

Background

3. On 29 October the First Minister made the following remarks at FMQs, in response to a question from Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con):

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

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PQ answers

5. An answer to Mr Cole-Hamilton's PQs is provided in Annex A of this submission. We propose to provide the same answer to all of the questions, setting out that Mr Hamilton can investigate any aspects of the Ministerial Code that arise within his remit.

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Letter to Mr Hamilton

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9. On that basis, it would be helpful for you to write to Mr Hamilton to draw his attention to the proposed answers to Mr Cole-Hamilton's PQs, and ensure that there is a common understanding as regards these matters.

10. **Are you content to send the attached correspondence to Mr Hamilton?**

Conclusion

11. Can you please advise me:

- If you are content to answer Mr Cole-Hamilton's PQs as set out in Annex A.
- If you are content to write to Mr Hamilton as set out in Annex B.



November 2020

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David Rogers
Colin McAllister

Annex A: PQ answer

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Annex B

James Hamilton

By email to: [REDACTED]

5 November 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the work you are doing on the First Minister's self-referral under the Minister Code.

As you will be aware, the First Minister made the following remarks at First Ministers Questions on 29 October in response to a question from Oliver Mundell.

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This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to discuss this further

Yours sincerely

John Swinney
Deputy First Minister

RE: Ministerial Code Referral- PQs and correspondence for clearance

From: [REDACTED]
To: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>,
McAllister C (Colin) <colin.mcallister@gov.scot>
Date: Tue, 03 Nov 2020 20:56:11 +0000
Attachments: Mr Hamilton letter- on template.dot (151.04 kB)

Many thanks [REDACTED] I've attached the letter on the correct template.

From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and
Cabinet Secretary for Education and Skills
Sent: 03 November 2020 20:37
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet
Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C
(Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

Hi [REDACTED]

Thank you for sending on, I have attached the correct letter template as you have requested.

Thanks
[REDACTED]

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland
and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House |
Edinburgh | EH1 3DG | [REDACTED] | E: DFMCSE@gov.scot

From: [REDACTED]@gov.scot>
Sent: 03 November 2020 20:34
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C
(Colin) <Colin.McAllister@gov.scot>
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At the moment the letter isn't in the correct letter template as I had trouble
locating a word version of it - if you were ok to send the correct template over to
me I will sort that out.

Happy to discuss.

Best wishes,

A solid black rectangular box used to redact a signature.

Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for
Education and Skills



Scottish Government
Riaghaltas na h-Alba
gov.scot

John Swinney BPA/MSP

F/T: [REDACTED]

E: dfmcse@gov.scot

James Hamilton

Advisor on the Ministerial Code

By email to [REDACTED]

5 November 2020

Dear Mr Hamilton

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Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Taigh Naomh Anndrais, Rathad Regent, Dùn Èideann EH1 3DG
St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



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Please let me know if it would be helpful to discuss this further

Yours sincerely

«Signature»

JOHN SWINNEY

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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RE: PQs- Ministerial Code referral- answers and background note for comment

From: [REDACTED]@transport.gov.scot>
To: [REDACTED]@gov.scot>, [REDACTED]
[REDACTED]@gov.scot>, Rogers D (David) (Constitution and Cabinet Director)
<david.rogers@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>
Cc: [REDACTED]@gov.scot>, [REDACTED]@gov.scot>, [REDACTED]
[REDACTED]@gov.scot>, [REDACTED]@gov.scot>
Date: Tue, 03 Nov 2020 09:59:01 +0000

Hi [REDACTED]
We have just discussed the PQs on our team call [REDACTED] and content with
both response and approach proposed.
Regards
[REDACTED]

From: [REDACTED]
Sent: 02 November 2020 21:43
To: [REDACTED]; Rogers D (David) (Constitution and Cabinet Director) ; McAllister C
(Colin)
Cc: [REDACTED]
Subject: PQs- Ministerial Code referral- answers and background note for comment
Importance: High

Hi everyone,

As you will know, there are 4 PQs from Alex Cole-Hamilton on the Ministerial
code referral due for response. The PO deadline for these is tomorrow.

The questions are as follows:

S5W-32469 To ask the Scottish Government what discretion the independent adviser of the Scottish
Ministerial Code, James Hamilton, has in his role to extend the remit of his investigation in the event that
evidence comes to light of possible further breaches of the Code. 03/11/2020 10/11/2020
S5W-32470 To ask the Scottish Government whether the referral of the First Minister to the independent
adviser of the Scottish Ministerial Code, James Hamilton, includes within its remit for him to ascertain
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As the PQs address the same set of issues from slightly different angles, I have
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also prepared a short background note (with contribution from [REDACTED]), which
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Could you let me know of any comments on the approach, the answer, or the background note, by 3 pm tomorrow.

Best wishes,



RE: PQs- Ministerial Code referral- answers and background note for comment

From: McAllister C (Colin) <colin.mcallister@gov.scot>
To: [REDACTED]@gov.scot>, [REDACTED]
[REDACTED]@gov.scot>, Rogers D (David) (Constitution and Cabinet Director)
<david.rogers@gov.scot>
Cc: [REDACTED]@transport.gov.scot>
Date: Tue, 03 Nov 2020 09:58:22 +0000

No comments from me

Regards

Colin McAllister



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Sent: 02 November 2020 21:43
To: [REDACTED]; Rogers D (David) (Constitution and Cabinet Director) ; McAllister C (Colin)
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[REDACTED]

From: [REDACTED]
To: [Deputy First Minister and Cabinet Secretary for Education and Skills](#)
Cc: [Rogers D \(David\) \(Constitution and Cabinet Director\)](#); [McAllister C \(Colin\)](#)
Subject: Ministerial Code Referral- PQs and correspondence for clearance
Date: 03 November 2020 20:34:25
Attachments: [Submission on remit for independent advisor - November 2020 as sent for clearance.docx](#)

Hi [REDACTED]

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Happy to discuss.

Best wishes,

[REDACTED]
J


Secretariat to Independent Adviser
November 2020

Deputy First Minister

INDEPENDENT ADVISER ON THE MINISTERIAL CODE: REMIT

Purpose

1. To seek views on:
 - A proposed letter to Mr Hamilton
 - Draft answers to 4 parliamentary questions lodged by Mr Cole- Hamilton, and due for response by 10 November.

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2. Urgent. A response by 5 November would be helpful to allow correspondence to Mr Hamilton to be issued before the relevant PQs are answered.

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Letter to Mr Hamilton

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9. On that basis, it would be helpful for you to write to Mr Hamilton to draw his attention to the proposed answers to Mr Cole-Hamilton's PQs, and ensure that there is a common understanding as regards these matters.

10. **Are you content to send the attached correspondence to Mr Hamilton?**

Conclusion

11. Can you please advise me:

- If you are content to answer Mr Cole-Hamilton's PQs as set out in Annex A.
- If you are content to write to Mr Hamilton as set out in Annex B.


November 2020

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David Rogers Colin McAllister

Annex A: PQ answer

S5W-32469 To ask the Scottish Government what discretion the independent adviser of the Scottish Ministerial Code, James Hamilton, has in his role to extend the remit of his investigation in the event that evidence comes to light of possible further breaches of the Code.

S5W-32470 To ask the Scottish Government whether the referral of the First Minister to the independent adviser of the Scottish Ministerial Code, James Hamilton, includes within its remit for him to ascertain whether she misled the Parliament at any point in respect of (a) her meetings regarding the Scottish Government investigation of Alex Salmond, (b) the timeline of her knowledge of complaints against him and (c) when she first knew that those complaints were subject to the Scottish Government's complaints handling procedure.

S5W-32471 To ask the Scottish Government how the Parliament can amend the remit of the Ministerial Code referral of the First Minister to ascertain (a) whether she misled the Parliament over her meetings with Alex Salmond, (b) the timeline of her knowledge of complaints against him and (c) when she first knew that the complaints were subject to the Scottish Government's complaints handling procedure. 03/11/2020 10/11/2020

S5W-32472 To ask the Scottish Government whether the independent adviser of the Scottish Ministerial Code, James Hamilton, in his role regarding the referral of the First Minister, is limited solely to the remit detailed in the answer to question S5W-31054 by John Swinney on 3 August 2020.

Answer: Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

Annex B

James Hamilton

By email to: [REDACTED]

5 November 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

I am writing to you in connection with the work you are doing on the First Minister's self-referral under the Minister Code.

As you will be aware, the First Minister made the following remarks at First Ministers Questions on 29 October in response to a question from Oliver Mundell.

Oliver Mundell (Dumfriesshire) (Con):

Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

The First Minister (Nicola Sturgeon):

My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

The Scottish Government has also been asked a number of Parliamentary questions by Alex Cole-Hamilton about the remit of the Code Referral.

I plan to answer the Parliamentary Questions as follows.

Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to discuss this further

Yours sincerely

John Swinney
Deputy First Minister

RE: Ministerial Code Referral- PQs and correspondence for clearance

From: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
To: [REDACTED]@gov.scot>, Deputy First Minister and Cabinet
Secretary for Education and Skills <dfmcse@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>,
McAllister C (Colin) <colin.mcallister@gov.scot>
Date: Wed, 04 Nov 2020 10:26:07 +0000
Attachments: Letter from the Deputy First Minister (297.47 kB)

Hi [REDACTED]

~

DFM has cleared the letter and PQs. He asked that the letter be issued today (attached) and that
the PQs go on Friday.

~

Thanks

[REDACTED]

~

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland
and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House |
Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

~

~

~

From: [REDACTED]@gov.scot>
Sent: 03 November 2020 20:56
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C
(Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

~

Many thanks [REDACTED], I've attached the letter on the correct template.

~

From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and
Cabinet Secretary for Education and Skills
Sent: 03 November 2020 20:37
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet
Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C
(Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

~

Hi [REDACTED]

~

Thank you for sending on, I have attached the correct letter template as you have requested.

~

Thanks

[REDACTED]

~

[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland
and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House |
Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

~

\~
\~

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 03 November 2020 20:34

To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>

Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>

Subject: Ministerial Code Referral- PQs and correspondence for clearance

\~

Hi [REDACTED]

\~

Slightly earlier than discussed, please see attached submission on the Ministerial Code Referral. I will also send the PQs referred to in the submission up via the PQ system.

\~

At the moment the letter isn't in the correct letter template as I had trouble locating a word version of it - if you were ok to send the correct template over to me I will sort that out.

\~

Happy to discuss.

\~

Best wishes,

\~

[REDACTED]

Letter from the Deputy First Minister

From: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
To: [REDACTED]
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills
<dfmcse@gov.scot>
Date: Wed, 04 Nov 2020 10:17:17 +0000
Attachments: Letter from the Deputy First Minister - 04 Novemeber .pdf (239.11 kB)

Dear Mr Hamilton,

Please find attached a letter from the Deputy First Minister.

Many Thanks,
[REDACTED]

[REDACTED] [REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland
and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House |
Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

Leas Phrìomh Mhinistear agus Rùnaire a' Chaibineit
airson Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for
Education and Skills



Scottish Government
Riaghaltas na h-Alba
gov.scot

John Swinney BPA/MSP

F/T: [REDACTED]

E: dfmcse@gov.scot

James Hamilton

Advisor on the Ministerial Code

By email to [REDACTED]

04 November 2020

Dear Mr Hamilton

SCOTTISH MINISTERIAL CODE: REFERRAL

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Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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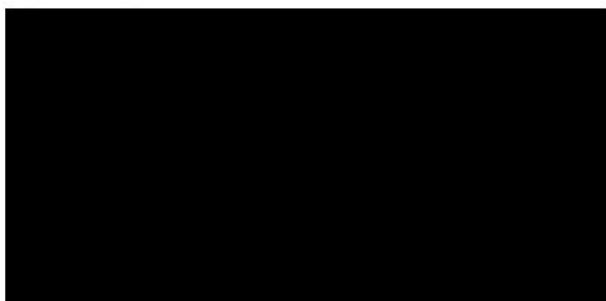
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This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to discuss this further

Yours sincerely



JOHN SWINNEY

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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Fwd: Letter from the Deputy First Minister

From: James Hamilton <[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Wed, 04 Nov 2020 13:48:12 +0000
Attachments: Letter from the Deputy First Minister - 04 Novemeber .pdf (239.11 kB); Draft reply toParliamentary Questions.docx (7.73 kB)

James Hamilton <[REDACTED]>

13:38 (3 minutes ago)

Dear [REDACTED]

I am forwarding an email received from the Deputy First Minister together with a draft reply for any comments you may have.

I am not sure about the logistics of sending the reply. It is probably best to do it through you although he sent it directly to me.

Best wishes

James

----- Forwarded message -----
From: <DFMCSE@gov.scot>
Date: Wed, 4 Nov 2020 at 10:17
Subject: Letter from the Deputy First Minister
To: <[REDACTED]>
Cc: <DFMCSE@gov.scot>

Dear Mr Hamilton,

Please find attached a letter from the Deputy First Minister.

Many Thanks,

██████████ | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland
and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House |
Edinburgh | EH1 3DG | Tel: ██████████ | E: DFMCSE@gov.scot

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airson Foghlam agus Sgilean
Deputy First Minister and Cabinet Secretary for
Education and Skills



Scottish Government
Riaghaltas na h-Alba
gov.scot

John Swinney BPA/MSP

F/T: [REDACTED]

E: dfmcse@gov.scot

James Hamilton

Advisor on the Ministerial Code

By email to [REDACTED]

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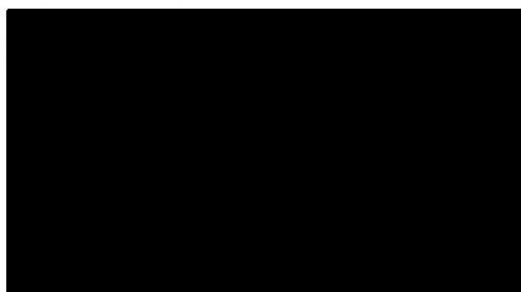
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JOHN SWINNEY

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Dear [Deputy First Minister] [Mr Swinney]

Thank you for your letter of 4 November 2020 and for letting me have sight of your proposed reply to Parliamentary questions concerning the remit of the Code Referral.

The proposed reply to the Parliamentary Questions is in my view a helpful one. I regard it as particularly useful that you propose to make it clear that I may look at other aspects of the Ministerial Code only to the extent that I deem them to be relevant.

Yours sincerely etc,

Letter from Deputy First Minister

From: James Hamilton [REDACTED] >
To: [REDACTED]@gov.scot>
Date: Wed, 04 Nov 2020 13:38:13 +0000
Attachments: Draft reply toParliamentary Questions.docx (7.73 kB)

Dear [REDACTED]

I am forwarding an email received from the Deputy First Minister together with a draft reply for any comments you may have.

I am not sure about the logistics of sending the reply. It is probably best to do it through you although he sent it directly to me.

Best wishes

James

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For more information please visit <http://www.symanteccloud.com>

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Yours sincerely etc,

From: James Hamilton [REDACTED]
Sent: 04 November 2020 14:07
To: [REDACTED] [REDACTED]@gov.scot>
Subject: Re: Transcript

Just to confirm that I printed the document and deleted it from my system

On Wed, 4 Nov 2020 at 11:27, James Hamilton [REDACTED] wrote:

On Wed 4 Nov 2020 at 10:58, wrote:

That would be perfect. Would 1pm be ok?

Ok, perfect!

From: James Hamilton [REDACTED]
Sent: 04 November 2020 10:44
To: [REDACTED]
Subject: Re: Transcript

Hi [REDACTED]

Would some time around lunchtime suit?

James

On Tue, 3 Nov 2020 at 20:38, [REDACTED]@gov.scot> wrote:

Hi James,

Just wanted to let you know I chased up the court transcript and it has arrived. As previously discussed, it is the full transcript of the court proceedings. Could we have a quick word tomorrow about how best to handle it?

Best wishes,

[REDACTED]

This e-mail (and any files or other attachments transmitted with it) is intended solely for the attention of the addressee(s). Unauthorised use, disclosure, storage, copying or distribution of any part of this e-mail is not permitted. If you are not the intended recipient please destroy the email, remove any copies from your system and inform the sender immediately by return.

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For more information please visit <http://www.symanteccloud.com>

[REDACTED]

[REDACTED]

[REDACTED]

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Attachments area

From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 04 November 2020 10:26
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

Hi [REDACTED]

DFM has cleared the letter and PQs. He asked that the letter be issued today (attached) and that the PQs go on Friday.

Thanks

[REDACTED]
[REDACTED] | Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

From: [REDACTED]@gov.scot>
Sent: 03 November 2020 20:56
To: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
Subject: RE: Ministerial Code Referral- PQs and correspondence for clearance

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From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 03 November 2020 20:37
To: [REDACTED]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Cc: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
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[REDACTED] Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Sent: 03 November 2020 20:34

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At the moment the letter isn't in the correct letter template as I had trouble locating a word version of it - if you were ok to send the correct template over to me I will sort that out.

Happy to discuss.

Best wishes,

[REDACTED]

From: [REDACTED]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
Sent: 04 November 2020 10:17
To: [REDACTED]
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
Subject: Letter from the Deputy First Minister

Dear Mr Hamilton,

Please find attached a letter from the Deputy First Minister.

Many Thanks,

[REDACTED]
[REDACTED] Deputy Private Secretary to John Swinney MSP | Deputy First Minister of Scotland and Cabinet Secretary for Education & Skills | Scottish Government | St Andrew's House | Edinburgh | EH1 3DG | Tel: [REDACTED] | E: DFMCSE@gov.scot



John Swinney BPA/MSP

F/T: [REDACTED]

E: dfmcse@gov.scot

James Hamilton

Advisor on the Ministerial Code

By email to [REDACTED]

1. 04 November 2020

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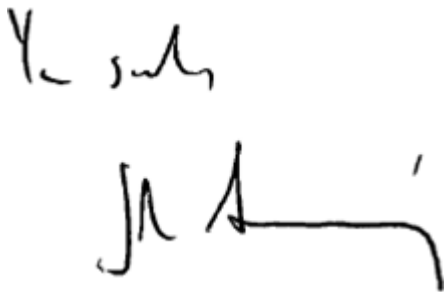
I plan to answer the Parliamentary Questions as follows.

Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

3. This answer makes clear that, in the delivery of your remit, you can consider any relevant evidence on other aspects of the Ministerial Code. I hope you find this information helpful.

Please let me know if it would be helpful to discuss this further

Yours sincerely



JOHN SWINNEY

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Taigh Naomh Anndrais, Rathad Regent, Dùn Èideann EH1 3DG
St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



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IN PEOPLE

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Until 2020



From: [REDACTED]
Sent: 05 November 2020 15:25
To: [REDACTED]
Subject: RE: Ministerial Code Referral- correspondence for consideration

Dear [REDACTED].

Many thanks, I have passed your advice to Mr Hamilton.

Best wishes,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]



[REDACTED]

WRITTEN PQ Answers

From: s0678a@gov.scot
To: [REDACTED]@gov.scot>
Date: Fri, 06 Nov 2020 12:55:25 +0000
Attachments: s5w-32472.docx (14.05 kB); s5w-32472_backgroundnote.docx (23.03 kB)

Please find attached, the answers to the WRITTEN PQs processed on 06/11/2020:-

S5W-32472

SCOTTISH PARLIAMENT

WRITTEN ANSWER

6 November 2020

Index Heading: Constitution and External Affairs

Alex Cole-Hamilton (Edinburgh Western) (Scottish Liberal Democrats): To ask the Scottish Government whether the independent adviser of the Scottish Ministerial Code, James Hamilton, in his role regarding the referral of the First Minister, is limited solely to the remit detailed in the answer to question S5W-31054 by John Swinney on 3 August 2020.

S5W-32472

John Swinney: Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W-31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

All answers to written Parliamentary Questions are available on the Parliament's website, the search facility for which can be found at <http://www.parliament.scot/parliamentarybusiness/28877.aspx>

BACKGROUND NOTE FOR S5W-32472

1. Alex Cole-Hamilton MSP is a Scottish Liberal Democrats member for Edinburgh Western.
2. Mr Cole-Hamilton is a member of the Committee on the Scottish Government Handling of Harassment Complaints, a member of the Health and Sport Committee, deputy convenor of the Equalities and Human Rights Committee, and substitute member for the Rural Economy and Connectivity Committee.
3. Mr James Hamilton, the Independent Adviser on the Code, is taking forward work on the First Minister's self referral under the Ministerial Code. Mr Hamilton is a former Director of Public Prosecutions in Ireland and has been an independent adviser since January 2013.
4. The remit for the Ministerial Code referral is set out in the answer to PQ S5W 31054, and is as follows:
 1. Review any relevant documentation relating to the meetings and discussions listed above.
 2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
 3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
 4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
 5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
 - i. whether the Ministerial Code is engaged regarding the meetings and discussions;
 - ii. whether there has been any breach of the Code and the nature of any such breach; and
 - iii. if a breach has occurred, advice on the appropriate remedy or sanction.
 6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.
5. Mr Cole-Hamilton has used Twitter to call for the remit of the Referral to be extended, as set out in the following tweet from 12/10/20 (when PQ's were lodged):

"Given where Salmond Inquiry evidence is taking our committee, I believe that the original remit of the ministerial code referral (around recording of

meetings between FM & Alex Salmond under sec 4.22/4.23 & whether FM tried to influence investigation) is no longer sufficient".

Contact Name:
Ext:



Documents provided by Scottish Government- additional redaction to the material

From: [REDACTED]@gov.scot>
To: James Hamilton [REDACTED]
Date: Mon, 09 Nov 2020 17:12:59 +0000

Dear James,

You have previously been provided with various documents relevant to the remit, which had also been provided to the Scottish Parliament committee.

Some of these documents are also within scope of an FOI appeal and decision, and have been published.

<https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2020/10/foi-19-00185-appeal/documents/foi-19-00185---document-1/foi-19-00185---document-1/govscot%3Adocument/FOI-19-00185%2B-%2BDocument%2B1.pdf>

You may wish to note that an additional redaction has been applied to one of the documents, as set out in the link above.

Happy to discuss.

Best wishes,

[REDACTED]

Re: Reminder to AS

From: James Hamilton <[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Thu, 12 Nov 2020 14:54:54 +0000

That's great, thank you.
James

On Thu, 12 Nov 2020 at 14:24, wrote:

Hi James,

I will draft something up later today for you to consider.

Best wishes,

[REDACTED]

From: James Hamilton [REDACTED]>
Sent: 12 November 2020 14:09
To: [REDACTED]
Subject: Re: Reminder to AS

Hi [REDACTED]

Yes, I think so. If he doesn't cooperate I propose to go ahead without him.

James

On Thu, 12 Nov 2020 at 13:29, <[REDACTED]@gov.scot> wrote:

Hi James,

I wondered about that. We could send an email early next week asking if he would be able to confirm when he would provide a submission?

Best wishes,

[REDACTED]

From: James Hamilton <[REDACTED]>
Sent: 12 November 2020 12:59
To: [REDACTED]@gov.scot>
Subject: Reminder to AS

Hi [REDACTED]

Are we at the stage where we need to send a reminder?

James

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Re: Salmond- follow up letter

From: James Hamilton [REDACTED] >
To: [REDACTED]@gov.scot>
Date: Fri, 13 Nov 2020 13:52:19 +0000
Attachments: JH Edit Mr Salmond- follow up letter.docx (7.96 kB)

I have rejigged this a little but I think the substance is the same.

Maybe you could ring later I am busy until 3.30.

James

On Fri, 13 Nov 2020 at 11:09, wrote:

Hi James,

Please see attached short follow up letter to Mr Salmond.

Happy to discuss,

Best wishes,

[REDACTED]

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Dear Mr Salmond,

As I set out in my letter dated 29 October, I am in the process of considering written submissions in relation to the matters referred to me by the First Minister as independent adviser in relation to the Ministerial Code and considering what additional information I may need to gather. I have now received written submissions from all the principal persons whom I believe may have relevant evidence except for you.

I would hope to be able to consider any written submission you might wish to provide as part of that process. It would therefore be helpful to me if you could indicate whether you intend to provide a written submission and if so when it might be available.

Yours sincerely,

Correspondence from Mr Hamilton

From: [REDACTED]@gov.scot>
To: Alex Salmond [REDACTED]
Date: Mon, 16 Nov 2020 09:38:19 +0000
Attachments: Mr Salmond- Letter 16 November 2020.docx (16.33 kB)

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

In your email of 6 October you asked that future correspondence be sent to you at your email address. However, if you would like correspondence to be sent additionally in hard copy, please let me know.

Best wishes,

[REDACTED]

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [REDACTED]@gov.scot

Alex Salmond,

By email: [REDACTED]

[REDACTED] October 2020

Dear Mr. Salmond,

As I set out in my letter dated 29 October, I am in the process of considering written submissions in relation to the matters referred to me by the First Minister as independent adviser in relation to the Ministerial Code and considering what additional information I may need to gather. I have now received written submissions from all the principal persons whom I believe may have relevant evidence except for you.

I would hope to be able to consider any written submission you might wish to provide as part of that process. It would therefore be helpful to me if you could indicate whether you intend to provide a written submission and if so when it might be available.

Yours sincerely,

James Hamilton

Re: Further letters- shell letter

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Thu, 19 Nov 2020 11:01:40 +0000

Hi [REDACTED]

Looks fine. We might want to be a little more specific about what we want them to cover in the statement, e.g. did they attend the meeting, what was the intended purpose of the meeting, who organised or instigated it, who else was present, what was discussed, etc.

Best wishes

James

On Thu, 19 Nov 2020 at 10:20, wrote:

Dear James,

As discussed, please see attached shell letter to go out to the remaining potential participants. I will start populating this with relevant information for each letter. Let me know of any comments on the general structure and content.

I have also copied a link to Mr Murrell's submission to the Parliamentary Committee. Apologies, I thought I had sent this previously. The section on the meetings is on p2.

https://www.parliament.scot/HarassmentComplaintsCommittee/General%20documents/Written_submission_from_Peter_Murrell.pdf

Best wishes,

[REDACTED]

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From: James Hamilton [REDACTED]
Sent: 19 October 2020 16:29
To: [REDACTED]@gov.scot>
Subject: Re: FW: Mr James Hamilton

Hi [REDACTED]

Suggested reply to this further letter. You might let me have any comments [REDACTED]
[REDACTED]

Best wishes

James

On Mon, 19 Oct 2020 at 09:55, James Hamilton [REDACTED] wrote:
OK

On Sun 18 Oct 2020 at 13:24, wrote:

Further correspondence from Mr Salmond with an additional question to consider. If you think it would be appropriate, I will send a short email on Monday confirming you have received the correspondence, are considering the questions posed, and will respond in due course.

From: Alex Salmond
Sent: 17 October 2020 12:34
To: [REDACTED]
Subject: Re: Mr James Hamilton

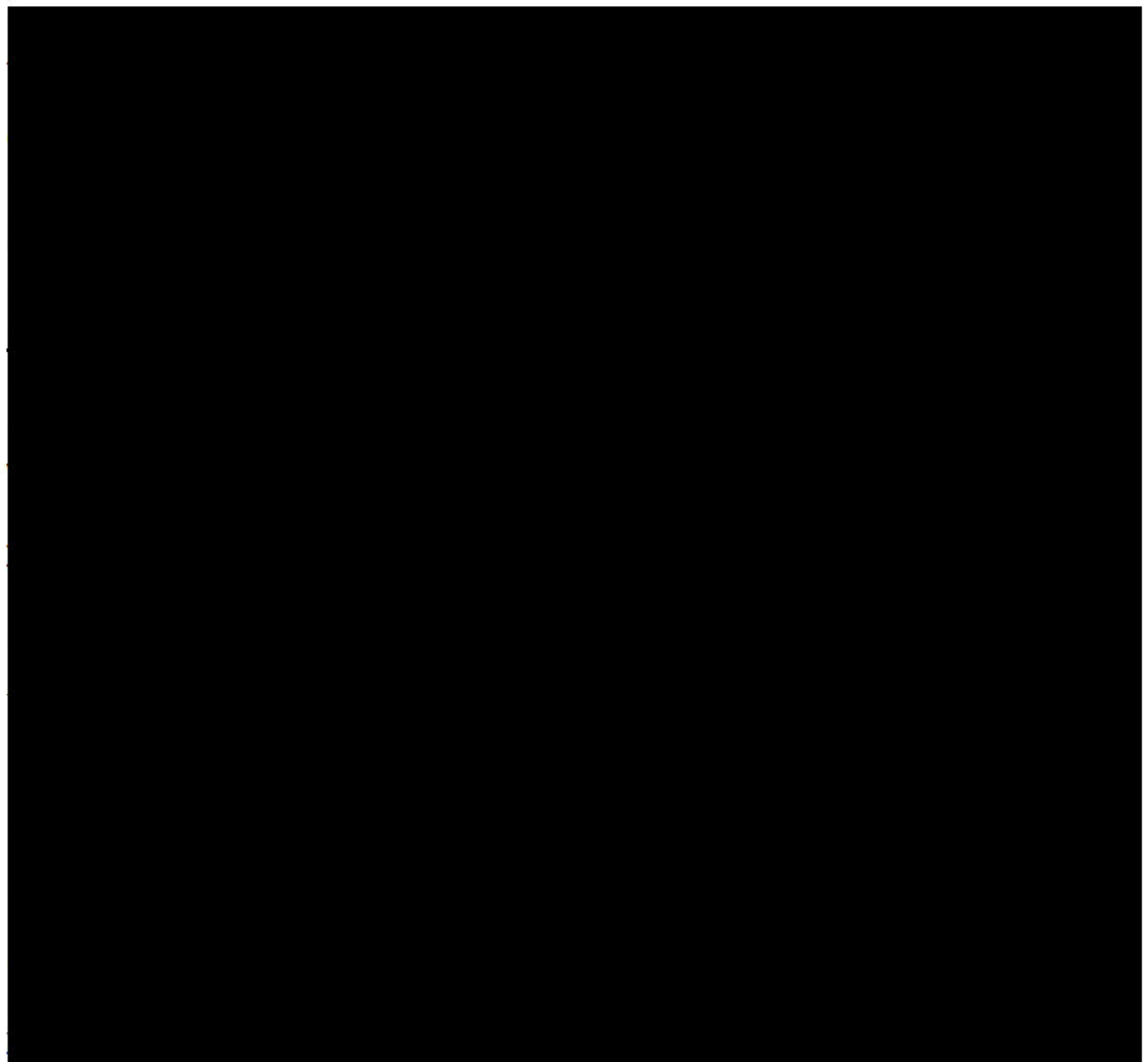
Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.



Sent from my iPad

On 6 Oct 2020, at 22:28, Alex Salmond <[redacted]> wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his

evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [REDACTED]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Re: Additional letters- updated drafts and contact details

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED]@gov.scot>
Date: Sun, 22 Nov 2020 16:39:22 +0000

Hi [REDACTED]

The letters appear to be in order except that Mr Murrell's still has a 4 week deadline. I tink they should go out tomorrow if possible.

Best wishes

James

On Fri, 20 Nov 2020 at 15:35, wrote:

Hi James,

I've put together the additional letters- I've attached these. I need to do another proofread of these finesse the questions about respective meetings before they are ready to issue, but thought I would send them over now for awareness and in case you have comments.

In terms of sending them, I've got postal addresses for the following:

- Stuart Nicholson
- Duncan Hamilton
- David Clegg
- Peter Murrell

Direct email addresses for:

- Stuart Nicholson
- Duncan Hamilton

Indirect email addresses for

- Kevin Pringle
- David Clegg
- Peter Murrell

I think we would need to ask Mr Aberdein to help facilitate contact with [REDACTED]
[REDACTED], I can't find any contact details for her online at all.

Given the time pressure, and the likelihood that many people are still working from home and therefore not picking up post from offices, I wondered about sending the letters by email where we have direct email addresses, noting that a hard copy has also been sent?

Happy to discuss.

Best wishes,

[REDACTED]

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From: Alex Salmond [REDACTED]
Sent: 23 November 2020 14:52
To: [REDACTED]
Subject: Correspondence for Mr Hamilton

Dear Mr Hamilton

Thank you for your letter of 29th October. I apologise for the delay in replying, but I had assumed that it had crossed with the exchange in the Scottish Parliament, detailed below, of that same date. To that end, I was awaiting a follow up letter from you, confirming that indeed your remit was not “limited to one aspect of the Ministerial Code”;

- **Oliver Mundell (Dumfriesshire) (Con):** Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions on the legal advice regarding the judicial review into Alex Salmond’s alleged behaviour?
- **The First Minister (Nicola Sturgeon):** My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

You will have noted that this parliamentary exchange seems at odds with your letter, which suggests that you are restricted to answering the “questions asked in the referral”. You state;

“As you are aware the remit of the referral was set out by the Deputy First Minister in a PQ response to the Scottish Parliament made on 6 August 2020. Considering that the principal matter I am asked to consider concerns an alleged breach of the Ministerial Code in the First Minister’s failure to record contacts with you it seems entirely logical to ask the question whether the First Minister was in fact involved in any way in the Scottish Government investigation. In seeking to answer the questions asked in the referral I will of course have to consider any relevant surrounding circumstances.”

As detailed in my previous letter, I know of no aspect of the Ministerial Code which prevents a First Minister intervening in a process, not least one which was found by the Court of Session to

be “unlawful”, and as one consequence of which said process is currently being examined by the SGHHC Committee of the Scottish Parliament.

As I understand it, not intervening to ensure Government is not acting unlawfully when there is a danger that this might be the case, could be considered a breach in terms of the Ministerial Code. Non-intervention in this matter is relevant to the period covering spring and summer of 2018, and in the autumn, this extended to agreeing with or permitting the Permanent Secretary to disregard external legal advice on the Government’s prospects of success in the Judicial Review.

This was further compounded by Parliamentary statements on repeated occasions, which have been questioned by MSPs as misleading, most pertinently in relation to the timing of when the First Minister first knew of the investigation and the explanation that [the 2nd April](#) meeting was held in the First Minister’s private home because she thought it was a matter of party business. There is, of course, the further question of the criminal leak of protected information to the Daily Record newspaper on 23/24th August 2018 and what, if anything, was the First Minister’s state of awareness of the circumstances and the potential involvement of her staff in same.

When I established the independent procedure for referral of purported First Ministerial breaches of the Ministerial Code, it was an innovation and one carried through in good faith. I appointed people of outstanding calibre, such as yourself as independent advisors, so that no-one could suggest that any referrals were being “fixed” either by the civil service or the Government.

It would be disappointing if this is now being done by the Deputy First Minister, by virtue of confining your terms of referral.

I look forward to your confirmation that your remit is not “limited to just one aspect of the Ministerial code”. On that basis I will submit the evidence for which you have asked.

Two final matters.

Firstly, I enclose the letter from the Crown Office which you requested. As you will note, it threatens prosecution if I were to reveal to the Parliamentary Committee (and presumably to yourself) documents which were disclosed in the course of the criminal case.

Secondly, I confirm that the record of Whatapp messages between the First Minister and myself from 5 November 2017 to 20 July 2018 supplied to the Parliamentary Committee by the First Minister and published on their website is correct. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

I look forward to hearing from you

Yours sincerely

Rt Hon Alex Salmond

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA



Levy & McRae

Solicitors

70 Wellington Street,

Glasgow

G2 6UA

(sent by email)

FOR THE ATTENTION OF DAVID McKIE

Dear Sirs

RNID Typetalk prefix: 18001

DX: 540310 Edinburgh 38

Your ref:

Our ref: KD/GS/ ED19004183

«Ourref»

17 September 2020

HMA V ALEX SALMOND

I refer to the above matter in which you represented Mr Salmond. As you will be aware, the Crown fully complied with its disclosure obligations in the case by disclosing relevant material to you to assist you in the proper preparation and presentation of your client's case.

I note that on 8 September 2020 there was widespread media coverage reporting that you had written to the Scottish Parliament's Committee on the Scottish Government Handling of Harassment Complaints). A copy of your letter to the Committee has been published on the Scottish Parliament website.

I note that in said letter you state that your client "is currently undertaking a review of the relevant documents and is committed to providing a list of documents from a) the judicial review and b) the disclosure to him in the criminal trial which have a direct bearing on the deliberations of the committee. It would be his intention to make submissions on those documents as part of the wider submission he wishes to make to the committee." Further, in the context of the information disclosed to your client in the criminal proceedings, you further state that "a great many documents have importance within the context of the remit of the Committee Inquiry but which were considered collateral to the trial itself. Again, our client will undertake to identify those documents and explain their relevance as part of his submission. The issue remains, however, that we are under an obligation not to share that material without the express consent of the Lord Advocate."

As you will be aware, section 162 of the Criminal Justice and Licensing (Scotland) Act 2010 states that in relation to all information disclosed to an accused by the Crown the accused must not use or disclose the information or anything recorded in it other than for the proper preparation and presentation of the accused's case. The definition of accused for these purposes includes both your client and any solicitor or advocate acting on his behalf, and information means material of any kind given to or obtained by the prosecutor in connection with the proceedings. Further, section 163 of the said Act states that any person who knowingly uses or discloses information in contravention of section 162 commits an offence. There is no provision in said Act or otherwise which authorises the Lord Advocate to permit any party to depart from the requirements of section 162.

For the sake of completeness you will also be aware that Article 11 of the Law Society of Scotland Code of Conduct for Criminal Work states in relation to disclosed material that "a solicitor should not give a client, or any other third party, even on a temporary basis, copies of any documents, materials or recordings. There may be exceptional circumstances justifying a departure from this rule in a particular case and if the solicitor believes that such exceptional circumstances exist, he must refer the matter to the Professional Practice Department of the Law Society of Scotland for guidance."

I hope that this is helpful.

Yours faithfully

A handwritten signature in purple ink, appearing to read 'Kenny Donnelly', with a stylized, flowing script.

Kenny Donnelly

Procurator Fiscal, High Court

Draft letter to AS

From: James Hamilton <[REDACTED]@[REDACTED]>
To: [REDACTED] <[REDACTED]@gov.scot>
Date: Tue, 24 Nov 2020 11:24:14 +0000
Attachments: 24 Nov Draft Letter to AS.docx (8.24 kB)

Dear [REDACTED]

Draft letter herewith.

If you have any comment on the draft please email or phone me. If not, please run it past Mr Ross for any observations he may have as a matter of urgency.

Best wishes

James

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24 November 2020 Draft letter to Alex Salmond

Dear Mr Salmond

Thank you for your letter of 23 November sent via email to [REDACTED] [REDACTED].

I consider it necessary for the purposes of my remit that I obtain a full understanding of what was the purpose of the meetings between you and the First Minister and what occurred at them. Your evidence is therefore of great importance to me.

I am prepared to consider any arguments you may wish to make about the scope of my remit. However, until I know what the evidence shows it would be premature for me to form any opinion on this question or, in the event that I accepted your arguments, on how I should then proceed.

Although the procedure for an inquiry by an independent advisor under the Ministerial Code is a relatively informal one the rules of natural justice apply including in particular my obligation to hear both sides of any question which arises for determination. This, in my opinion, extends not only to the consideration of evidence but also to any questions which may arise as to the scope of the remit.

It follows that if a question arises as to whether a particular matter does or does not fall within the scope of the remit or, if it does not, whether that scope ought to be expanded, it would be wrong of me to take a view on such an issue based solely on your submissions without also giving the First Minister an opportunity to comment on them.

I would therefore suggest that you let me see your evidence in relation to the matter as soon as possible, together with any observations you may wish to make about the scope of the remit. If necessary I will then seek the First Minister's observations before I decide how I should deal with the matter.

Yours sincerely

From: [REDACTED]
Sent: 24 November 2020 20:43
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: Correspondence- for comment

Dear Douglas,

I hope you are well.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Yours sincerely

Dear Mr Hamilton

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA



Levy & McRae
Solicitors
70 Wellington Street,
Glasgow
G2 6UA

(sent by email)

RNID Typetalk prefix: 18001

DX: 540310 Edinburgh 38

Your ref:

Our ref: KD/GS/ ED19004183

«Ourref»

17 September 2020

FOR THE ATTENTION OF DAVID McKIE

Dear Sirs

HMA V ALEX SALMOND

I refer to the above matter in which you represented Mr Salmond. As you will be aware, the Crown fully complied with its disclosure obligations in the case by disclosing relevant material to you to assist you in the proper preparation and presentation of your client's case.

I note that on 8 September 2020 there was widespread media coverage reporting that you had written to the Scottish Parliament's Committee on the Scottish Government Handling of Harassment Complaints). A copy of your letter to the Committee has been published on the Scottish Parliament website.

I note that in said letter you state that your client "is currently undertaking a review of the relevant documents and is committed to providing a list of documents from a) the judicial review and b) the disclosure to him in the criminal trial which have a direct bearing on the deliberations of the committee. It would be his intention to make submissions on those documents as part of the wider submission he wishes to make to the committee." Further, in the context of the information disclosed to your client in the criminal proceedings, you further state that "a great many documents have importance within the context of the remit of the Committee Inquiry but which were considered collateral to the trial itself. Again, our client will undertake to identify those documents and explain their relevance as part of his submission. The issue remains, however, that we are under an obligation not to share that material without the express consent of the Lord Advocate."

As you will be aware, section 162 of the Criminal Justice and Licensing (Scotland) Act 2010 states that in relation to all information disclosed to an accused by the Crown the accused must not use or disclose the information or anything recorded in it other than for the proper preparation and presentation of the accused's case. The definition of accused for these purposes includes both your client and any solicitor or advocate acting on his behalf, and information means material of any kind given to or obtained by the prosecutor in connection

with the proceedings . Further, section 163 of the said Act states that any person who knowingly uses or discloses information in contravention of section 162 commits an offence. There is no provision in said Act or otherwise which authorises the Lord Advocate to permit any party to depart from the requirements of section 162.

For the sake of completeness you will also be aware that Article 11 of the Law Society of Scotland Code of Conduct for Criminal Work states in relation to disclosed material that "a solicitor should not give a client, or any other third party, even on a temporary basis, copies of any documents, materials or recordings. There may be exceptional circumstances justifying a departure from this rule in a particular case and if the solicitor believes that such exceptional circumstances exist, he must refer the matter to the Professional Practice Department of the Law Society of Scotland for guidance."

I hope that this is helpful.

Yours faithfully



Kenny Donnelly

Procurator Fiscal, High Court

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6 November 2020

Index Heading: Constitution and External Affairs

Alex Cole-Hamilton (Edinburgh Western) (Scottish Liberal Democrats): To ask the Scottish Government how the Parliament can amend the remit of the Ministerial Code referral of the First Minister to ascertain (a) whether she misled the Parliament over her meetings with Alex Salmond, (b) the timeline of her knowledge of complaints against him and (c) when she first knew that the complaints were subject to the Scottish Government's complaints handling procedure.

S5W-32471

John Swinney: Parliament was advised on 3 August 2020 about the terms of the remit for the Ministerial Code referral in PQ answer S5W 31054. The decision to proceed with a referral and the setting of its terms are consistent with the provisions set out in the Ministerial Code and have been agreed with the Independent Adviser. The terms of the remit address the concerns that have been raised about the First Minister's compliance with specific aspects of the Code in relation to certain meetings and other contacts, as described in the remit. As indicated by the First Minister at First Minister's Questions on 29 October, in delivering the remit the Independent Adviser is not constrained in taking evidence and reporting on other aspects of the Ministerial Code that he deems to be relevant.

All answers to written Parliamentary Questions are available on the Parliament's website, the search facility for which can be found at

<http://www.parliament.scot/parliamentarybusiness/28877.aspx>

From: [REDACTED]
Sent: 24 November 2020 16:56
To: 'James Hamilton' [REDACTED]
Subject: RE: Draft letter to AS

Hi James,

Many thanks, and apologies for the delay in responding- [REDACTED]
[REDACTED]

I don't have any comments so have passed the letter to Mr Ross for consideration.

Best wishes,

[REDACTED]
[REDACTED]

From: James Hamilton [REDACTED]
Sent: 24 November 2020 11:24
To: [REDACTED]@gov.scot>
Subject: Draft letter to AS

Dear [REDACTED]

Draft letter herewith.

If you have any comment on the draft please email or phone me. If not, please run it past Mr Ross for any observations he may have as a matter of urgency.

Best wishes

James

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From: Douglas Ross [REDACTED]

Sent: 01 December 2020 19:15

To: [REDACTED]@gov.scot>

Subject: FW: [REDACTED]

Dear [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: Douglas Ross

Sent: 01 December 2020 08:19

To: [REDACTED]

Subject: RE: [REDACTED]

Dear [REDACTED]

[REDACTED]

As always, I would be happy to discuss any matters arising by phone.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 30 November 2020 17:46

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: RE: [REDACTED]

Hi Douglas,

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross [REDACTED]

Sent: 30 November 2020 17:23

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: [REDACTED]

Rebecca

[REDACTED]

Many thanks.

Douglas

From: [REDACTED]@gov.scot <[REDACTED]@gov.scot>

Sent: 30 November 2020 16:59

To: Douglas Ross [REDACTED]

Subject: RE: [REDACTED]

Hi Douglas,

[REDACTED]

Best wishes,

[REDACTED]

From: [REDACTED]

Sent: 30 November 2020 16:49

To: 'Douglas Ross' [REDACTED]

Subject: RE: [REDACTED]

Hi Douglas,

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross [REDACTED]

Sent: 30 November 2020 15:52

To: [REDACTED]@gov.scot>

Subject: RE: [REDACTED]

Rebecca

[REDACTED]

Happy to discuss any matters arising.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 27 November 2020 17:52

To: Douglas Ross [REDACTED]

Subject: RE: [REDACTED]

Hi Douglas,

[REDACTED]

[REDACTED]

[REDACTED]

From: Douglas Ross [REDACTED]
Sent: 27 November 2020 16:18
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: [REDACTED]

Rebecca

No apology required.

[REDACTED]

[REDACTED]

Regards

Douglas
Douglas Ross QC Ampersand Advocates

phone: [REDACTED]
web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



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From: [REDACTED] <[REDACTED]@gov.scot> <[REDACTED]@gov.scot>
Sent: 25 November 2020 13:53
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: [REDACTED]

Hi Douglas,

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross [REDACTED]

Sent: 25 November 2020 11:10

To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Subject: Re: [REDACTED]

Dear [REDACTED]

[REDACTED]

[REDACTED]

Regards

Douglas

Sent from my iPad

On 24 Nov 2020, at 20:44, "[REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>" <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)> wrote:

Dear Douglas,

I hope you are well.

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

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For more information please visit <http://www.symanteccloud.com>

From: [REDACTED]
Sent: 01 December 2020 20:49
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: Correspondence- for comment

Hi Douglas,

Apologies, this has been sitting in my outbox since early afternoon- as the files are large it hadn't sent. I have received your later response on [REDACTED] but for completeness wanted to send this information anyway, although I don't think this significantly changes the advice you have provided.

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 01 December 2020 08:19
To: [REDACTED] >
Subject: RE: Correspondence- for comment

Dear [REDACTED]

[REDACTED]

As always, I would be happy to discuss any matters arising by phone.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

Clerk: [Alan Moffat](#)

Deputy clerks: [Jennifer Dunn](#), [Sheena Hume](#), [Shawn McArthur](#) & [Kathryn Ferguson](#)



Leading Top Ranked Set in Chambers & Partners and The Legal 500

From: [REDACTED] <[REDACTED]@gov.scot>

Sent: 30 November 2020 17:46

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: RE: Correspondence- for comment

Hi Douglas,

Apologies, that's me not reading things carefully enough. [REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 30 November 2020 17:23

To: [REDACTED] <[REDACTED]@gov.scot>

Subject: RE: Correspondence- for comment

[REDACTED]

Many thanks for your prompt reply. A couple of points arising:

[REDACTED]

Many thanks.

Douglas

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 30 November 2020 16:59
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: Correspondence- for comment

Hi Douglas,

Turns out my filing system is less dreadful than I thought. [REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: [REDACTED]
Sent: 30 November 2020 16:49
To: 'Douglas Ross' <douglas.ross@advocates.org.uk>
Subject: RE: Correspondence- for comment

Hi Douglas,

No problem at all. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 30 November 2020 15:52

To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Subject: RE: Correspondence- for comment

[REDACTED]

I'm starting to look at this now. There are a few documents which I don't think I have seen which may be relevant to my response:

[REDACTED]

If you were able to send these to me, I'd be grateful.

Happy to discuss any matters arising.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

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From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Sent: 27 November 2020 17:52

To: Douglas Ross <douglas.ross@advocates.org.uk>

Subject: RE: Correspondence- for comment

Hi Douglas,

Many thanks, I can confirm that there have been no further developments on this since the 24th November and that it would be really helpful to have comments early next week.

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>

Sent: 27 November 2020 16:18

To: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Subject: RE: Correspondence- for comment

[REDACTED]

No apology required.

Can I just check that, now that the Lockerbie appeal is over, you would still like me to provide comments and that there have been no developments since your e-mail of 24 November?

If so, I will try to provide comments in the early part of next week.

Regards

Douglas

Douglas Ross QC Ampersand Advocates

phone: [REDACTED]

web: www.ampersandadvocates.com

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From: [REDACTED]@gov.scot>
Sent: 25 November 2020 13:53
To: Douglas Ross <douglas.ross@advocates.org.uk>
Subject: RE: Correspondence- for comment

Hi Douglas,

Thanks for letting me know, and apologies as I should have remembered that you had other commitments at the end of November.

I will let Mr Hamilton know.

Best wishes,

[REDACTED]

From: Douglas Ross <douglas.ross@advocates.org.uk>
Sent: 25 November 2020 11:10
To: [REDACTED]@gov.scot>
Subject: Re: Correspondence- for comment

Dear [REDACTED]

I'm well thanks but am one of the Crown counsel in the Lockerbie appeal which began yesterday and ends on Friday, so unable to attend to other matters this week.

Assuming the appeal ends on time - which I think it will - I can put this matter to the top of my agenda next week.

Regards

Douglas

Sent from my iPad

On 24 Nov 2020, at 20:44, [REDACTED]@gov.scot> wrote:

Dear Douglas,

I hope you are well.

[REDACTED]

[REDACTED]

Happy to discuss.

Best wishes,

[REDACTED]

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RE: Personal- Ministerial Code Referral- Correspondence from James Hamilton

From: [REDACTED] <[REDACTED]@gov.scot>
To: Nicolson S (Stuart) Special Adviser <stuart.nicolson@gov.scot>
Date: Tue, 01 Dec 2020 20:56:10 +0000

Dear Stuart,

That would be fine, if you send me your response I will ensure it is conveyed to Mr Hamilton, and also retained in line with the necessary document retention requirements for the review.

Best wishes,

[REDACTED]

From: Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Sent: 01 December 2020 17:31
To: [REDACTED] <[REDACTED]@gov.scot>
Subject: RE: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear [REDACTED]

I'd just like some advice in terms of the practicalities of replying to Mr Hamilton.

Given that he has written to me through you, would I be correct in assuming that I should similarly convey my response via yourself?

Best regards,

Stuart

From: [REDACTED] <[REDACTED]@gov.scot>
Sent: 25 November 2020 09:21
To: Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
Subject: Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear Stuart Nicolson,

Please see attached correspondence from James Hamilton, independent advisor on the Ministerial Code.

In order to ensure that the current Covid measures do not delay this correspondence, it has been sent by email in the first instance. A duplicate hard copy will also be sent by post.

Best wishes,

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] | Secretariat to the Independent Advisor under the Ministerial Code | Please
contact me on Skype or on [REDACTED]

[REDACTED]

[REDACTED]

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